

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY,
FLORIDA.

CIVIL DIVISION

CASE NO. 502014CA014846XXXXMB AG

RYAN BLACK,
Plaintiff,

v.

GERRY MATTHEWS and PALM HOUSE, LLC,
a Delaware limited liability company,

Defendants.

PALM HOUSE, LLC, a Delaware limited liability
company, and 160 ROYAL PALM, a Florida
corporation,

Defendant/Counter-Plaintiffs,

v.

RYAN BLACK,

Plaintiff/Counter-Defendant.

AMENDED AGREED ORDER ON PLAINTIFF'S MOTION TO APPOINT RECEIVER

THIS CAUSE came before the Court with the Plaintiff, Defendants, Counter-Plaintiffs, inclusive of 160 Royal Palm, LLC and intervenor, Palm House Hotel, LLLP (hereinafter, each of Plaintiff, Defendants, Counter-Plaintiffs, inclusive of 160 Royal Palm, LLC and intervenor, Palm House Hotel, LLC is a "Party" and collectively the "Parties") advising the

FILED
2015 JUL 20 AM 11:30
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

Court that they have entered into an amended Confidential Agreement relating to Plaintiff's Motion for Appointment of Receiver which the Parties wish to enforce via Order of the Court.

ORDERED AND ADJUDGED as follows:

1. Effective immediately, Cary Glickstein c/o Ironwood Construction Services LLC, whose business address is 1118 Waterway Lane, Delray Beach, Florida 33483 (hereinafter "Receiver") is appointed as Receiver of the partially constructed hotel condominium property owned by Defendant/Counter-Plaintiff, 160 Royal Palm, LLC and located at 160 Royal Palm Way, Palm Beach, Florida (the "Property" or the "Project"), which is the subject matter of this action.
2. Within ten (10) days of the date of this Order, the Receiver shall file an Oath of Receiver with this Court.
3. The Court waives the requirement for both the Plaintiff and Receiver to post a bond.
4. The Receiver shall, to the best of his ability, prepare and file with the Court, within thirty (30) days of entry of this Order, a full and detailed inventory, under oath, of all parts of the Property over which the Receiver has been given custody pursuant to this Order.
5. The Receiver is directed to prepare and file with the Clerk of this Court on a quarterly basis by the 15th day following each calendar quarter (starting after the first full calendar quarter after the entry of this Order), so long as the Property shall remain in his possession or care, a full and complete report for the Property, certified to the best of Receiver's knowledge and belief, setting forth all receipts and disbursements, reporting all changes in assets in his charge or claims against the assets that have occurred since filing of the previous report in

compliance with Rule 1.620(b) of the Florida Rules of Civil Procedure. The Receiver is directed to serve a copy of each report on the attorneys of record for the Parties.

6. The Receiver is hereby authorized and empowered to enter upon the Property to secure, improve, repair, manage and oversee completion of construction, improvements or appurtenances to the Property in accordance with this Order to obtain a Certificate of Occupancy issued by the Town of Palm Beach. In fulfilling his duties, the Receiver shall at all times possible seek to complete the construction, improvements and appurtenances to cause the finished Project (including furniture, fixtures, equipment, restaurant build-out, tables, chairs and the like) to be ready for the intended operation of the Project as a first class, 5 star, condominium hotel. Construction shall, if at all possible, be no less than and in accordance with the 2012 Town of Palm Beach approvals for the Project with such changes, additions, substitutions or modifications of the plans and specifications as the Receiver may deem appropriate or necessary to complete construction of the Project for operation as a first class, 5star, condominium hotel.

7. The Receiver is authorized to execute and deliver, in the name of Receiver for Defendant/Counter-Plaintiff, 160 Royal Palm, LLC, and as agent of intervenor, Palm House Hotel LLLP, such documents or instruments as are necessary or appropriate, including, without limitation, agreements with third parties, inclusive of the Town of Palm Beach, to complete construction of the Project as necessary but consistent with the terms of this Order.

8. Intervenor, Palm House Hotel LLLP has agreed to subordinate its rights, title and interests in and to the Project and the property located at 160 Royal Palm Way, Palm Beach, Florida by virtue of its recorded mortgage, recorded at ORB 27103, Page 129 of the Public Records of Palm Beach County for the purpose of refinancing the existing first mortgage and

further extension of credit, all to the extent of no more than 70 million dollars. The Receiver is authorized to execute such documents as necessary to effectuate this subordination.

9. The Parties have agreed to endeavor to obtain funds and financing to complete construction of the Project and shall present all financing offers to the Receiver. In all events, the Receiver shall accept a reasonable financing proposal that best ensures the completion of the Project in accordance with this Order.

10. Intervenor, Palm House Hotel, LLLP has agreed to release its rights, title and interests in and to the Property, the Project or any condominium unit sold without payment or remuneration until all sums due to mortgagees ahead of it in priority are paid in full. Once all of said mortgagees are paid in full, the release price for each such unit shall be the sum which equates to the then current balance due to intervenor, Palm House Hotel, LLLP under its note and mortgage divided by the number of condominium units unsold. For example, \$30,000,000.00 remains unpaid to Palm House LLLP and 60 units remain unsold, the release price for the next unit shall be \$500,000.00. During the term of the Receivership, the Receiver is empowered to execute such documents to effectuate such releases.

11. The Receiver is entitled to possession of, and shall forthwith take possession of, all contracts, plans, specifications relating to the Property and the construction of improvements thereon, files, papers, records, keys and all other property, tangible and intangible personal or mixed which relate to the Property and construction on the Property. Persons in possession of same shall immediately surrender possession to the Receiver.

12. The Receiver is hereby authorized to employ contractor(s), subcontractors, materialmen, architects, engineers, surveyors, consultants, managers, agents, attorneys, including, without limitation, independent legal counsel for the Receiver, accountants,

independent contractors, servants and employees including, without limitation, the Receiver's employees, whose billable rate shall not exceed \$40.00 per hour, and to contract with them and utilize them for the purpose of fulfilling his duties as the Receiver and effectuating the terms and conditions of this Order; provided, however, Receiver shall neither contract with, employ or engage any company in which Receiver has an ownership interest or receives compensation, nor serve as a general contractor or subcontractor. Furthermore, the Receiver shall endeavor to contract or reinstate contracts with Gordon Campbell Grey, as a consultant for the Project, and Hersh Bender Associates, with respect to services to be performed concerning the design and completed operation of the Project.

13. The Receiver shall be reimbursed for all out-of-pocket expenses, and is entitled to payment of fees for services rendered as Receiver, as well as for his pre-appointment efforts, in the amount of \$450.00 per hour will shall be treated as an operating expense for the Project and paid from the Palm House Operating Account, as hereinafter defined, on a monthly basis. The Receiver shall be reimbursed from the Palm House Operating Account on a monthly basis for any charges, expenses, or fees incurred by the Receiver in connection with his duties hereunder including, without limitation, legal and other professional fees, bond premium costs, insurance premium costs, management fees, security costs, leasing commissions, and costs reasonably advanced by the Receiver.

14. The Receiver hereby appointed shall have, and is hereby given, all necessary and incidental powers of a Receiver for the purpose of effectuating this Order but subject to this Order, which are necessary to complete construction on the Property. The Receiver, or any Party may apply at any time to this Court for further and other instructions from the Court, and for further power necessary to enable the Receiver to properly fulfill his duties.

15. The Receiver shall use commercially reasonable efforts to effectuate this Order and carry out his duties. In the event of a dispute the Receiver shall not act as to the disputed matter until the Court rules on the matter in dispute. The Parties shall seek Court redress as soon as practicable.

16. The Receiver shall establish and maintain, at a bank in Palm Beach County, Florida whose deposits are insured by the Federal Deposit Insurance Corporation, a separate, noninterest-bearing operating account for the Property (the "Palm House Operating Account"), into which the Receiver shall deposit all funds relating to the Property and from which the Receiver shall be compensated and reimbursed for the Receiver's expenses.

17. The Receiver shall maintain a separate comprehensive system of office records, and books and accounts concerning the operation of the Property. Upon reasonable notice, and at all reasonable times, any party, or their respective agents and other representatives, shall have reasonable access to such records, accounts and books and to all vouchers, files and all other materials pertaining to the operation of the Property, all of which the Receiver agrees to keep safe, available and separate from any records not having to do with the operation of the Property.

18. The Receiver shall not knowingly suffer, cause or permit any waste of the Property or any of the components thereof, but only so long as Receiver has adequate operating funds to fulfill the mandate of this Order.

19. Within five (5) days of the date of this Order, intervenor, Palm House Hotel, LLLP shall wire transfer to the Palm Hose Operating Account, pursuant to forthcoming wire instructions, the sum of, but not to exceed, \$150,000.00 as an advance for securing, operating, maintaining, and preserving the Property by the Receiver and for payment of the Receiver's fees

and expenses as provided herein. In the absence of financing described in paragraph 8 above to fund construction, intervenor, Palm House Hotel, LLLP shall fund any shortfall in the event that the Palm House Operating Account does not have sufficient funds sufficient to pay the Receiver's fees and expenses. The Receiver's entitlement to payment of the Receiver's fees and expenses hereunder shall survive the discharge or resignation of the Receiver. All sums advanced hereunder shall be repaid to intervenor, Palm House Hotel, LLLP upon the first financing described in paragraph 9 above.

20. The Receiver has derived judicial immunity and will not be liable for any damage, injury or cause of action arising out of the Receivership or execution of his duties as Receiver, to the extent such actions are pursuant to this Order or any subsequent order(s) of the Court. The Receiver shall not be liable for any debts, obligations, actions or failures to act that were incurred or that occurred prior to the date of this Order. The Receiver will be relieved from liability of any kind from any actions or omissions on account of funds not being provided for the fulfillment of the Receiver's duties hereunder.

21. All parties to this action, including their shareholders, representatives, members, managers, agents, employees, attorneys, accountants, partners, affiliates, independent contractors, officers, directors, successors, representatives and assigns, are ordered upon penalty of contempt of Court, to cooperate fully with the Receiver and his professionals and agents, and are enjoined from interfering in any way with the Receivership or the Receiver's duties.

22. This Order does not preclude Defendant/Counter-Plaintiff, Palm House LLC, or its representatives or intervenor, Palm House Hotel LLLP, members or authorized

representatives from entering upon the Property so long as they do not interfere with the performance of receivership duties.


23. All litigation in this action, except for matters arising from or related to this Order and the Confidential Agreement between the Parties, is stayed unless and until the Court issues an order lifting said stay. With respect to any third-party action or proceeding instituted against the Property, the Receiver may defend, compromise, or adjust or otherwise dispose of any or all such actions or proceedings instituted to create, perfect, or enforce any lien or claim against the Property that Receiver deems necessary and advisable to carry out Receiver's mandate under this Order and likewise institute, prosecute, compromise, adjust, intervene in, or become party to such actions or proceedings that Receiver deems necessary and advisable to preserve the Property; provided, however, Receiver's authority to as to any monetary settlements to any creditor having a lien or claim against the Property shall be subject to securing the Project financing described in paragraph 9 above.

24. The Receiver shall be discharged upon the first to occur of (a) the issuance of a certificate of occupancy by the Town of Palm Beach or (b) the satisfaction of the indebtedness of Palm House LLC to Palm House LLLP. The Receiver shall have the right to resign upon thirty (30) days written notice to the Court and the parties, in the event that the Receiver does not receive the Receiver's fees and expenses or funds for the fulfillment of the Receiver's duties hereunder or is unable or unwilling to continue as the Receiver. In such event, the Parties shall appoint a successor Receiver, subject to the Court's approval, upon notice to the Parties and a hearing, if necessary. The Receiver may be removed for cause upon notice to the Parties and hearing.

25. This Order and the Parties' consent to its entry by the Court shall not operate as a waiver of any claims or defenses, now or hereafter existing between the Parties. The Parties' consent to entry of this Order shall not be considered an admission, or a waiver of any right, claim or defense.

26. The Court shall retain jurisdiction for matters arising from or relating to the enforcement or performance of this Order.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 16 day of July, 2015.



DONALD HAFELE
Circuit Court Judge

Copies furnished to:

Alan M. Burger, Esq., McDonald Hopkins LLC, 505 S. Flagler Drive, Suite 300, West Palm Beach, FL 33401 (aburger@mcdonaldhopkins.com); mrose@mcdonaldhopkins.com
C. Brooks Ricca, Jr., Esq., C. Brooks Ricca, Jr. & Associates, P.A., The Barristers Building, Suite 200, 1615 Forum Place, West Palm Beach, FL 33401; bricca@riccalawyers.com; lkendrick@riccalawyers.com.
Adam T. Rabin, Esq., Phoebe J. Eckstein, Esq. McCabe Rabin, P.A., 1601 Forum Place, Suite 505, West Palm Beach, FL 33401; arabin@mccaberabin.com; peckstein@mccaberabin.com; e-filing@mccaberabin.com.
Alexander L. Domb, Esq., Alexander L. Domb, P.A., 11190 Polo Club Road, Suite I, Wellington, FL 33414; alec@adllaw.org; michelle@aldlaw.org
Henry B. Handler, Esq., Weiss, Handler & Cornwell, P.A., One Boca Place, Suite 218-A, 2255 Glades Road, Boca Raton, FL 33431; hbh@weissandhandlerpa.com