

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION 2022 MAR 22 AM 9:23

HAROLD D. WARD, Director, Division of  
Mining and Reclamation, west Virginia  
Department of Environmental Protection

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

Civil Action No. 20-C-282  
Presiding Judge: Christopher C. Wilkes  
Resolution Judge: James H. Young, Jr.

ERP ENVIRONMENTAL FUND, INC.,

Defendant.

**ORDER AFFIRMING PRELIMINARY INJUNCTION AGAINST ANY AND ALL  
ACTION AGAINST PROPERTY OF THE RECEIVERSHIP  
ESTATE INCLUDING ISSUANCE OF TAX DEEDS**

By motion dated February 21, 2022, Doss Special Receiver, LLC (“the Receiver”), the Special Receiver for ERP Environmental Fund, Inc. (“ERP”), moved the Court for an order enforcing the Court’s December 22, 2020 *Preliminary Injunction And Order Preliminarily Appointing A Special Receiver For Defendant's Property, Assets, And Operations* (“the Receivership Order”) and enjoining further action against property of the Receivership Estate in the following counties as a result of delinquent property taxes incurred by ERP: Boone, Lincoln, Logan, Raleigh, Wyoming, and Marion. The Receiver seeks an order (1) prohibiting these counties from selling, auctioning, foreclosing, or otherwise disposing of real property of the Receivership Estate until further notice from the Receiver; and (2) prohibiting the State Auditor’s office from executing and delivering tax sale deeds vesting ownership of real property of the Receivership Estate with individuals who have purchased any Receivership Estate real property at tax sales during the previous three calendar years.

The Receiver states that, in the absence of an injunction by the Court, parties who have purchased ERP property by paying delinquent taxes may petition the State Auditor's office for issuance of tax deeds after April 1, 2022, which would divest the Receivership Estate of assets it plans to sell to fund further reclamation efforts at un-reclaimed former ERP mine sites in West Virginia. *See* W. Va. Code §11A-3-18; W. Va. Code §11A-3-23.

A telephonic hearing was held on the Receiver's motion on March 18, 2022, with notice of the hearing sent by the Receiver to the county taxing authorities, the State Auditor's office, and the parties who purchased ERP property via tax sale. No party objected during the telephonic hearing. During the hearing, the Receiver's counsel informed the Court that Indemnity National Insurance Company ("INIC")—a secured lienholder on all ERP Receivership Estate real and personal property—was in the process of redeeming property listed in Exhibit 1 to the Receiver's February 21, 2022 motion.

While the Court appreciates the abundance of caution demonstrated by the Receiver in seeking an order specifically enjoining the issuance of tax deeds and/or further action against property of the Receivership Estate, the Court does not believe an additional injunctive order is necessary. Paragraph 15 of this Court's December 22, 2020 Preliminary Injunction Order (the "Receivership Order") provides that "[a]ll of [ERP]'s real property . . . shall be deemed immediately transferred to [ERP]'s receivership estate." Paragraph 34 of the Receivership Order, under the caption "*Injunctions Against Interference with Receivership*" provides that "[a]ll persons . . . are enjoined from in any way interfering with the operation of the receivership or in any way disturbing the assets, liabilities, and operations of the receivership, pending further order of this Court." Emphasis added. Paragraph 38 of the Receivership Order provides that "[n]o person shall file suit or take other legal or enforcement action against [ERP] or [ERP]'s



property” with certain limited exceptions. Paragraph 39 of the Receivership Order provides that “[t]he exercise of all rights and remedies against . . . [ERP]’s property, including . . . the creation, perfection, or enforcement of a lien, are hereby stayed and suspended except with the written consent of the Special Receiver or an Order of this Court, permitting the exercise of such rights and remedies . . .” Emphasis added. Paragraph 43 of the Receivership Order specifically states that the Court has taken “*in-rem* jurisdiction” over ERP’s property, and paragraph 44 gives the Court jurisdiction over all matters related to the receivership estate and/or ERP’s property and the implementation of the Receivership Order itself.

As described above, the Receivership Order placed all of ERP’s within the Receivership Estate and has already enjoined actions against Receivership Estate property, including perfection or enforcement of liens. Any action by the counties or the State Auditor’s office to divest the Receivership Estate of valuable real property in order to enforce tax liens without leave of this Court plainly violates the terms of the Receivership Order.

Accordingly, for the reasons stated above, the Court hereby clarifies that the December 22, 2020 Receivership order prohibits the following until further notice from this Court: (a) further enforcement of tax liens by the counties, including sale of Receivership Estate real property with delinquent taxes via sale or; and (b) issuance of tax deeds by the State Auditor’s office for any tracts of real property held by the Receivership Estate—whether titled in the name of ERP Environmental Fund, Inc., ERP Mineral Reserves, LLC, Robin Land Company, Logan II LLC, etc.

ENTERED this 22<sup>nd</sup> day of March 2022.

Date: 3/22/22  
Certified copies sent to:  
☒ counsel of record  
☒ parties  
☒ other Business Court  
(please indicate)  
By: C. Baile  
E. Thompson  
C. Huth  
T. Lisa  
☐ certified/1st class mail  
☐ fax  
☐ hand delivery  
☐ interdepartmental  
Other directives accomplished:  
[Signature]  
Deputy Circuit Clerk

  
CHRISTOPHER WILKES  
Presiding Judge