

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

PEOPLES BANK, NATIONAL ASSOCIATION,
a national banking association,

Plaintiff,

v.

Civil Action No. 15-C-807
Presiding Judge: Tabit
Resolution Judge: Young

APPALACHIAN MINING AND RECLAMATION,
L.L.C., a Kentucky limited liability company,
DJWV2, LLC, a West Virginia limited liability company,
GREEN COAL, LLC, a Kentucky limited liability company,
JOINT VENTURE DEVELOPMENT, LLC, a Kentucky
limited liability company,
PRODUCER'S COAL, INC., a Kentucky corporation
formerly known as Producer's Dock, Inc.
PRODUCER'S LAND, LLC, a Kentucky limited liability
company,
REDBUD DOCK, LLC, a Kentucky limited liability
company,
SOUTHERN MARINE SERVICES LIMITED
LIABILITY COMPANY, a Kentucky limited liability
company,
SOUTHERN MARINE TERMINAL, LLC, a Kentucky
limited liability company,
DENISE DAWN JOHNSON, Trustee of the Denise Johnson
Real Estate Trust,
DENNIS JOHNSON, a West Virginia resident, and
MARK PINSON, a West Virginia resident,

Defendants.

ORDER GRANTING PEOPLES BANK, NATIONAL ASSOCIATION'S
MOTION TO APPOINT SPECIAL RECEIVER

On a previous day came Plaintiff, Peoples Bank, National Association
("Plaintiff" or the "Bank"), by counsel, and moved this Court (the "Motion") to

appoint a special receiver for Defendants, APPALACHIAN MINING AND RECLAMATION, L.L.C., GREEN COAL, LLC, JOINT VENTURE DEVELOPMENT, LLC, PRODUCER'S COAL, INC., PRODUCER'S LAND, LLC, REDBUD DOCK, LLC, (the "**Corporate Defendants**"), DENISE DAWN JOHNSON, as Trustee of the Denise Johnson Real Estate Trust (the "**Trust**"), DENNIS JOHNSON, and MARK PINSON (collectively the "**Defendants**"). Based upon the Motion and the pleadings and considering the evidence adduced at the hearing on the Motion on April 29, 2016, the argument of the parties, and pursuant to Rule 66 of the West Virginia Rules of Civil Procedure, this Court hereby **GRANTS** the Motion, and **FINDS** as follows:

1. On February 12, 2016, involuntary bankruptcy petitions were filed in the United States Bankruptcy Court for the Southern District of West Virginia against DJWV2, LLC [case number 3:16-bk-30062], SOUTHERN MARINE SERVICES LIMITED LIABILITY COMPANY [case number 3:16-bk-30063], and SOUTHER MARINE TERMINAL, LLC [case number 3:16-bk-30064], resulting in a stay of any proceedings against those three defendants pursuant to 11 U.S.C. § 362 and, as such, the aforementioned entities are not affected by this Order.

2. On May 9, 2016, a Chapter 11 bankruptcy petition was filed in the United States Bankruptcy Court for the Southern District of West Virginia by DENNIS JOHNSON [case number 3:16-bk-30227] resulting in a stay of any proceedings against Mr. Johnson pursuant to 11 U.S.C. § 362 and, as such, Mr. Johnson is not affected by this Order.

3. Each of the Corporate Defendants and Mr. Pinson executed various Loan Documents (as defined in the Motion) with the Bank, including a Forbearance Agreement dated June 30, 2015, and subsequently amended, (the “**Forbearance Agreement**”) with respect to loans in the aggregate original principal amount of more than \$19 million.

4. The Trust was not a party to the Loan Documents or Forbearance Agreement and therefore there is no privity of contract between Plaintiff and the Trust.

5. The Court has not made a finding as to whether the transfer of the assets to the Trust constituted a fraudulent transfer, and because there is no privity of contract or a finding of an attempt to defraud creditors, the Bank is not entitled to the appointment of a special receiver over the Trust at this time.

6. However, the Bank possesses liens on certain properties, real and personal, of the Corporate Defendants.

7. The Corporate Defendants have no currently-operating active mines, are unable to resume mining operations, and are at risk of further loss and deterioration of the assets of the Corporate Defendants.

8. The Bank is entitled to the appointment of a special receiver over the Corporate Defendants and Mr. Pinson, as set forth below, pursuant to the Forbearance Agreement and W. Va. Code §53-6-1.

9. David G. Zatezalo is an acceptable, qualified, and appropriate receiver.

Accordingly, it is hereby **ORDERED** that Mr. Zatezalo is appointed as a special receiver (the “**Receiver**”) for the Corporate Defendants and Mr. Pinson; and it is further

ORDERED that Mr. Zatezalo is appointed as a special receiver (the “**Receiver**”) for the Corporate Defendants and Mr. Pinson; and it is further

ORDERED that the Receiver is hereby granted the full and exclusive power and authority to conduct all business and take all actions necessary or advisable to preserve, enhance, and/or liquidate the assets of the Corporate Defendants (“**Receivership Assets**”) or the value thereof, including, without limitation: (i) entering upon the taking possession of the business properties and/or premises of the Corporate Defendants; (ii) operating the Corporate Defendants’ respective business, including, without limitation, entering into contracts and other agreements; (iii) filing a petition in bankruptcy for each of the Corporate Defendants; (iv) liquidating the business properties and assets of the Corporate Defendants; and/or (v) employing such professionals, including attorneys, accountants, engineers, and consultants (“**Professionals**”) as may be reasonably necessary to carry out the Receiver’s duties and responsibilities under this Order; and it is further

ORDERED that, as to Mr. Pinson, the Receiver is appointed under this Order for the limited purpose of exercising any and all right that Mr. Pinson has to exercise control and/or voting power over any and all entities that hold permits

necessary to conduct the business operations of the Corporate Defendants; and it is further

ORDERED that the Receiver may compensate Professionals in the ordinary course of business from the funds of the receivership estates, and if the Court finds the receiver has abused his discretion in this matter, damages may be awarded; and it is further

ORDERED that each of the Corporate Defendants and Mr. Pinson is hereby ENJOINED from interfering in any way with the decisions or actions of the Receiver without court approval; and it is further

ORDERED that each of the Corporate Defendants and Mr. Pinson shall cooperate fully with the Receiver, including, without limitation, responding promptly to reasonable requests for information or documentation and execution of documents, and, upon request, shall promptly supply the Receiver with any and all books, records, correspondence, ledgers, accounts and business records that are reasonably necessary to conduct business operations; and it is further

ORDERED that, pursuant to W. Va. Code § 53-6-1, the Receiver "shall give bond with good security to be approved by the court, or by the clerk thereof, for the faithful performance of his trust, and for paying over and accounting for, according to law, all such moneys that may come into his hands by virtue of his appointment," and that such approval shall be obtained by presenting to the Court, with notice to the parties, the Receiver's proposal with respect to such bond and with an

opportunity for the parties hereto to advise the Court of their objections, if any; and it is further

ORDERED that Plaintiff and the Receiver shall indemnify and hold harmless any and all of the Defendants for any liabilities, losses, or damages (including attorneys' fees and costs) caused to Defendants, or caused to third parties such that any or all of the Defendants might be held liable or claimed to be held liable, by acts or omissions taken by Plaintiff and/or the Receiver pursuant to this Order; and it is further

ORDERED that, pursuant to W. Va. Code § 53-6-3, the Receiver shall render to the Court an account of the Receivership Assets at least quarterly beginning on the date this Order is entered; and it is further

ORDERED that Plaintiff shall pay to or on behalf of the Corporate Defendants such funds as are necessary to effectuate the receivership provided herein, including but not limited to any funds needed to ensure that the receiver is paid, that the business assets and operations are adequately insured, and that the business assets are adequately secured and preserved; and it is further

ORDERED that the receivership provided herein, including the Receiver's compensation, the compensation of any professionals engaged by the Receiver on behalf of the Corporate Defendants, and any other expenditures relating to the receivership and the business operations of the Corporate Defendants, shall be paid first from net proceeds of the operations or income of the Corporate Defendants, and

if there are not sufficient funds, then any remainder shall be paid or funded by Plaintiff as set forth in the foregoing paragraph; and it is further

ORDERED that:

- a. In order to exercise the authority conferred upon it by this Order, the Receiver is hereby vested with the standing and all power and authority of:
(i) the board of directors, shareholders, members, manager and general partner or partners of the Corporate Defendants, or corporate officer(s) as the case may be; (ii) Mr. Pinson with respect to Mr. Pinson's voting and managing rights over any permit-holding business(es) necessary for the conduct of the Corporate Defendants' business operations, including, but not limited to, the power and authority to (1) execute documents, instruments, assignments and resolutions in connection with any authorized sale or finance transaction; and (2) have and obtain access to employee records, reports, and other corporate records pertaining to business operations. However, the Receiver may not assert or waive, on behalf of any of the Defendants, the privileges and protections afforded by the attorney/client privilege and the work product and/or joint defense doctrines, or other similar protections or privileges, as those protections and privileges apply to information, documents, and materials prior to the execution of this Order.
- b. The Receiver is authorized in its discretion to employ, fix, and pay the compensation, salaries, and wages of all managers, agents, employees, servants, and contractors as may be advisable or necessary in its judgment for the operation, management, wind-down, conduct, control, leasing, sale or custody of the affairs of the Receivership Assets.
- c. The Receiver may continue to use the Corporate Defendants' existing bank accounts or, in its discretion, may establish a new bank account or accounts, using either the Receiver's or the Corporate Defendants' tax identification number, which will be used exclusively to deposit income and receipts related to the operation of the Corporate Defendants' business. To the extent that the Receiver creates any new accounts in accordance with this provision, any existing liens shall attach to those accounts in the same manner as such liens exist on the pre-existing accounts, and to the same extent and priority.
- d. The Receiver may permit existing insurance coverage for the Receivership Assets to remain in force until the expiration of the current paid up term under such policy or policies and shall notify the insurance carriers immediately of the appointment of the Receiver hereby and request that the Receiver be added to the insurance policy or policies as an additional insured thereunder. Upon the expiration of the paid up portion of such policy or

policies, the Receiver shall have the responsibility for keeping the Receivership Assets insured in an amount the Receiver deems appropriate given the condition of the Receivership Assets, using its reasonable business judgment, and may as an option keep in force the existing insurance coverage or obtain new coverage for the Receivership Assets, each of which coverage shall name the Receiver as an additional insured thereunder. The Receiver shall not be required to maintain insurance for any Receivership Assets that are sold and may determine to allow insurance coverage to lapse or be terminated if the Receiver determines in its reasonable judgment that insurance is unnecessary.

- e. The Receiver shall be authorized to provide the Defendants' insurers and insurance broker(s) with required notice of claims or potential claims against the Defendants.
- f. The Corporate Defendants, their shareholders, members, directors, managers, equity owners, partners, officers, agents, employees or other representatives (other than Mr. Johnson, as he is subject to the automatic bankruptcy stay), and Mr. Pinson, are hereby directed to use their best efforts to ensure a smooth transition of the operation of the Corporate Defendants' businesses and Receivership Assets to the Receiver or its designee, and shall cooperate with the Receiver or its designee in consummating such transition.

The Defendants' objections are preserved and the Defendants preserve the right to go before the Business Court Division to rescind or modify this Order.

The Clerk is directed to send copies of this Order to all counsel of record whose names and addresses appear below:

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ENTERED this 18th day of May, 2016.

Joanna I. Tabit
Judge Joanna I. Tabit
Business Court Division

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY SEAL AND HAND OF SAID CLERK THIS 18
DAY OF May 2016
Cathy Gatson
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
by HClauh