

In the Circuit Court of Kanawha County, West Virginia

Harold D. Ward,
Plaintiff,

v.

Case No. CC-20-2020-C-282
Judge Christopher C. Wilkes

ERP Environmental Fund, Inc,
Defendant

**ORDER REGARDING MOTION OF SPECIAL RECEIVER TO ENFORCE
RECEIVERSHIP ORDER AGAINST FAYETTE COUNTY SOLID WASTE
AUTHORITY'S COMPLAINT SERVED ON DECEMBER 11, 2024**

This matter came before the Court this 1st day of April, 2025. The Special Receiver, Doss Special Receiver, LLC, by counsel, has filed the Motion of Special Receiver to Enforce Receivership Order Against Fayette County Solid Waste Authority's Complaint Served on December 11, 2024. The Special Receiver, Doss Special Receiver, LLC, by counsel, Scott H. Kaminski, Esq., and nonparty, Fayette County Solid Waste Authority, by counsel, Michael O. Callaghan, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

On or about December 11, 2024, the Fayette County Solid Waste Authority filed a "public nuisance" action against ERP Environmental Fund, Inc. and others in the Circuit Court of Fayette County, *Fayette County Solid Waste Authority v. ERP Environmental Fund, Inc., et al.*, Fayette County Civil Action No. 24-C-142. See Mot., p. 3. The Court notes a copy of the Complaint was attached as Exhibit 1 to the instant motion. On January 14, 2025, a Notice of Removal was filed in Fayette County Civil Action No. 24-C-

142, whereby the defendants in Civil Action No. 24-C-142 removed it to the United States District Court for the Southern District of West Virginia (*Fayette County Solid Waste Authority v. ERP Environmental Fund, Inc., et. al.*, No. 2:25-CV-00023 (S.D. W. Va.) and moved to dismiss it. See Corrected Reply, p. 5.

A review of the court file in Fayette County Civil Action No. 24-C-142 reveals that on February 27, 2025, Judge Ewing entered an Order Confirming Stay of Proceedings, ordering that due to the Notice of Removal, the proceedings in Fayette County Civil Action No. 24-C-142 shall be stayed unless and until the case is remanded back to the Fayette County Circuit Court. See 28 U.S.C. §1446(d), the circuit court “shall proceed no further unless and until the case is remanded”.

This Court’s instant Motion of Special Receiver to Enforce Receivership Order Against Fayette County Solid Waste Authority’s Complaint Served on December 11, 2024 requests this Court “order[] the [Fayette County Solid Waste Authority] to dismiss the Complaint (Ex. 1) served upon Defendant ERPEF...and enjoin[] further enforcement action against ERPEF unless and until FCSWA obtains leave of this Court in accordance with the Receivership Order”. See Mot., p. 1.

This Court determines that because of the removal and stay of Fayette County Civil Action No. 24-C-142, no further action on the pending motion shall take place unless and until the matter is remanded to the circuit court, including the determination of whether or not this Court has jurisdiction to dismiss a Fayette County case.

Accordingly, it is hereby ADJUDGED and ORDERED that there shall be NO ACTION on the instant Motion of Special Receiver to Enforce Receivership Order Against Fayette County Solid Waste Authority’s Complaint Served on December 11, 2024 unless and until such time as Fayette County Civil Action No. 24-C-142 is remanded from the federal court. In such event, it shall be the responsibility of counsel to

contact the Court. The Court notes the objections and exceptions of the parties to any adverse ruling herein.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, electronically.

Enter: April 1, 2025

/s/ Christopher C. Wilkes
Circuit Court Judge
8th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.