

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 18th day of September, 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 revealed that on February 27, 2025, Judge Ewing entered an Order Confirming Stay of Proceedings, ordering that 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”.

The 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.

On April 1, 2025, this Court entered its Order Regarding Motion of Special Receiver to Enforce Receivership Order Against Fayette County Solid Waste Authority’s Complaint Served on December 11, 2024, finding that because Fayette County Civil Action No. 24-C-142, the underlying matter, was removed to the United States District Court for the Southern District of West Virginia, no further action on the instant motion shall be taken unless and until the matter is remanded to circuit court.

On July 7, 2025, a Notice of Remand was filed, alerting this Court that “the United States District Court for the Southern District of West Virginia has remanded the underlying matter to the Circuit Court of Fayette County, West Virginia by Order entered

July 3, 2025". See Notice of Remand, 7/7/25.

This Court, the Circuit Court of Kanawha County, was asked to provide the requested relief of dismissing the Complaint in a civil action in the Circuit Court of Fayette County. West Virginia Code Chapter 55, Article 21 is titled the Uniform Commercial Real Estate Receivership Act and West Virginia Code § 55-21-5 governs the power of the court.

West Virginia Code § 55-21-5 provides:

The court that appoints a receiver under this article has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property and all such orders shall have statewide effect.

W. Va. Code Ann. § 55-21-5 (West).

On December 20, 2020, this Court entered a Preliminary Injunction and Order Preliminarily Appointing a Special Receiver for ERP's Property, Assets, and Operations (hereinafter "the Receivership Order"). By the Receivership Order, the Special Receiver was appointed by this Court to serve as Receiver for ERP, which entails, in part, managing more than 100 surface mining permits held by Defendant ERP across West Virginia, Kentucky, and Illinois. See Mot., p. 2. The Court notes that at the time, the West Virginia Department of Environmental Protection (WVDEP) instituted this action, the agency explained to the Court that ERP was "woefully insolvent, has no cash, has no operating cash flow, has laid off all its management and employees...." The primary goal of this suit was to ensure the proper allocation of ERP's limited remaining resources to those sites where reclamation will have the greatest impact on abating imminent harm to the public health and safety posed by ERP's numerous unreclaimed mine sites. *Id.* (*citing* Complaint and Mot. for Prelim. Inj.).

Certain provisions of the Receivership Order likewise bar enforcement action against the Estate without consent of the Receiver or leave of the Court. Paragraph 21

of the Order reads as follows:

21. No person shall file suit or take other legal or enforcement action against the Special Receiver without an Order of this Court permitting the suit or action; *provided, however*, that the foregoing restriction shall not apply to suits or other legal or enforcement actions against the Special Receiver solely in his capacity as the representative of the Defendant or the receivership estate if and to the extent such suit or other action is permitted by the express provisions of Paragraphs 37 through 41 of this Order.

Paragraph 34 of the Order reads as follows:

34. All persons, including but not limited to the Defendant and its officers, directors, agents, servants, employees, attorneys, and all persons in active concert or participation with them, 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.

Further, Paragraph 37 of the Order provides:

37. Any and all existing proceedings against or in respect of the Defendant or its property are hereby stayed and suspended pending further Order of this Court, *provided, however*, that nothing in this Order shall (a) prevent any person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph or (b) affect any state or federal regulatory agency's police and regulatory authority in respect of the Defendant and the Defendant's assets and operations, including any action, suit or proceeding that is taken in respect of the Defendant by or before the regulatory agency, other than the enforcement of a payment order by the regulatory agency.

Further, Paragraph 38 of the Order provides:

Paragraph 38 reads as follows:

38. No person shall file suit or take other legal or enforcement action against the Defendant or the Defendant's property, except (a) any action taken by a state or federal regulatory agency pursuant to its police and regulatory authority in respect of the Defendant and the Defendant's assets and operations, including any action, suit or proceeding that is taken in respect of the Defendant by or before the regulatory

agency, other than the enforcement of a payment order by the regulatory agency with respect to payment obligations incurred prior to the Special Receiver's appointment, (b) with the written consent of the Special Receiver, or (c) in accordance with an Order of this Court permitting the suit or action.

Accordingly, pursuant to its inherent authority under West Virginia Code § 55-21-5, this Court, as a circuit court of Kanawha County, cannot conclude it should dismiss the Fayette County action at this point. This Court will stay any further action in Fayette County Civil Action No. 24-C-142 as to Defendant ERP only, until the Plaintiff in that case requests the appropriate leave from this Court.

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 the appropriate leave is made. 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: September 18, 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.