S T A T E O F M I C H I G A N

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

INDEPENDENT BANK, a Michigan banking corporation,

Plaintiff,

v.

ADELAIDE POINTE BOATERS SERVICES, LLC, a Michigan limited liability company, ADELAIDE POINTE QOZB LLC, a Michigan limited liability company, ADELAIDE POINTE BUILDING 1, LLC, a Michigan limited liability company, LEESTMA MANAGEMENT, LLC, a Michigan limited liability company, WATERLAND BATTLE CREEK PROPERTIES, LLC, a Michigan limited liability company, RYAN LEESTMA, an individual, and the RYAN M. LEESTMA DOMESTIC ASSET PROTECTION TRUST DATED NOVEMBER 30, 2018, EDWIN J VANDERPLOEG, JR., as Trustee of the Ryan M. Leestma Domestic Asset Protection Trust u/a/d November 30, 2018, jointly and severally,

_____/

Case No. 25-20760-CBB

Hon. Curt A. Benson

OPINION AND ORDER

INTRODUCTION

On September 23, 2025, Independent Bank sued the Adelaide Pointe Project entities and guarantors after multiple construction loans, totaling more than $28 million, went into default when two notes matured in mid-2025 and were not repaid. The Bank sought judgments on the notes and guarantees, judicial foreclosure, and the immediate appointment of a receiver, relying heavily on mortgage provisions stating that a receiver could be appointed "as a matter of right" upon default and without regard to the adequacy of the collateral or the borrowers' solvency.

The defendants opposed the request, arguing that the Bank was acting in bad faith to circumvent a recent forbearance agreement that was intended to remain in effect until November 15, 2025. They disputed the existence and seriousness of any current defaults, denied that the collateral was in danger, and contended that receivership would harm, rather than protect, the value of a largely completed, operating mixed-use development.

The court thereafter conducted an informal video conference with counsel for all parties. During that conference, the court permitted the defendants to submit written objections, which they filed on October 1. Independent Bank filed a reply brief on October 6, and the defendants submitted "supplemental objections" the following day.

The court issued its opinion and order on October 16, 2025. In the opinion, the court acknowledged that the loan documents unambiguously authorize the lender to seek a receiver upon default, and that no traditional equitable defenses to the contracts were apparent. Nonetheless, the court emphasized that receivership is an equitable remedy, not a purely contractual one. Because a receiver acts as an officer of the court and places property under judicial control, the court cannot surrender its discretion merely because the parties agreed in advance to a receivership clause. Contractual consent is an important factor, but it does not eliminate the court's duty to evaluate equitable considerations.

Relying on Michigan receivership law and persuasive federal authority, the court held that appointment of a receiver is a harsh, extraordinary remedy of last resort, appropriate only in extreme cases and typically when necessary to prevent imminent loss, waste, or irreparable harm. Less intrusive remedies must be considered first.

Applying those principles, the court concluded that this case could not be resolved on an emergency, no-hearing basis. Numerous material factual disputes exist, including the current value and condition of the collateral, the Project's financial viability, whether uncured defaults remain, the effect and enforceability of the August 2025 forbearance agreement, and whether the Bank's motion was brought in good faith. Because these issues require credibility determinations and a developed evidentiary record, appointment of a receiver without a hearing would be inappropriate.

POST-OPINION ACTIVITY

The court held another informal conference on October 28, 2025. During the conference, plaintiff's counsel expressed disagreement with the court's October 16, 2025, opinion and order. The court stated that it would not require plaintiff to file a separate motion for reconsideration. Rather, the court invited plaintiff to incorporate its objections in its supplemental brief in support of its motion for the appointment of a receiver. See generally, *Yoost v. Caspari*, 295 Mich. App. 209, 219, 813 N.W.2d 783, 789 (2012). Plaintiff filed its supplemental brief on November 12, 2025.

The court will not reconsider its opinion regarding the receivership act.

In its verified complaint, and in its September 23, 2025, brief in support of its motion for the appointment of a receiver, plaintiff relied primarily on the receivership act, MCL 554.1011 – 1040. There was no mention of the Michigan uniform assignment of rents act. MCL 554.1051 – 1070. In other words, the plaintiff did not seek from the court a ruling on the applicability (if any) of the Michigan uniform assignment of rents act. That statute was not before the court.

Rather, at plaintiff's request, the court applied the fact of this case to the receivership act, especially MCL 554.1016, which regulates the appointment of receivers.

To the extent that the plaintiff accuses the court of relying on "antiquated, distinguishable, and even non-binding caselaw" in concluding that an evidentiary hearing is warranted, the plaintiff fails to persuade.

How courts interpret statutes is well known:

> The primary goal of statutory construction is to give effect to the Legislature's intent. This Court begins by reviewing the language of the statute, and, if the language is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute. Judicial construction of an unambiguous statute is neither required nor permitted. When reviewing a statute, all non-technical words and phrases shall be construed and understood according to the common and approved usage of the language and, if a term is not defined in the statute, a court may consult a dictionary to aid it in this goal. A court should consider the plain meaning of a statute's words and their placement and purpose in the statutory scheme. Where the language used has been subject to judicial interpretation, the legislature is presumed to have used particular words in the sense in which they have been interpreted.

McCormick v. Carrier, 487 Mich. 180, 191–92, 795 N.W.2d 517, 524–25 (2010) (citation and quote marks omitted).

The Uniform Law Commission promulgated The Uniform Commercial Real Estate Receivership Act in 2015. See Heather M. Olson, *Michigan Enacts the Uniform Commercial Real Estate Receivership Act,* 45 Mich. Real Prop. Rev. 3, 4 (2018). Michigan adopted the act effective May 7, 2018. *Id.* The goal of the statute is to standardize the law of receiverships over real and personal property:

> The Act specifies the bases upon which a receiver may be appointed, including where the mortgagor has agreed in writing to the appointment of a receiver upon a default. This is particularly helpful since many commercial mortgage documents include the mortgagor's consent to the appointment of a receiver upon its default. (For those mortgage documents that do not include this language, it should certainly be added.)

Id.

The receivership act states in relevant part as follows:

Sec. 6. (1) The court may appoint a receiver as follows:

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> (2) In connection with the foreclosure or other enforcement of a security agreement or lien, the court may appoint a receiver for the property under any of the following circumstances:
>
> > (b) The person that granted a lien in the property agreed in a signed record to appointment of a receiver on default.
>
> ****

> (e) The owner fails to turn over to the secured party proceeds or rents the secured party was entitled to collect.

MCL 554.1016(2)

Importantly, the legislature used the word, "may" in describing when the court may appoint a receiver. When the legislature writes the word "may," it is signaling a discretionary rather than mandatory action. *Church & Church Inc. v. A-1 Carpentry*, 281 Mich. App. 330, 339, 766 N.W.2d 30, 36 (2008), *aff'd on other grounds*, 483 Mich. 885, 759 N.W.2d 877 (2009)(citing with approval, *Murphy v. Ameritech*, 221 Mich App 591, 600, 561 N.W.2d 875 (1997).

In other words, the legislature explicitly acknowledged that property owners may contractually agree to receiver appointments in the event of default. However, the statute makes clear that even when such a binding agreement exists, the decision to appoint a receiver remains within the court's discretion. This directly undermines plaintiff's contention on pages 11 and 12 of its supplemental brief that a pre-default contractual provision, standing alone, requires the court to appoint a receiver.

This conclusion is buttressed by the way in which the Uniform Law Commission presented to state legislatures the proposed Uniform Commercial Real Estate Receivership Act. In the Comments to Section 6, the drafters discussed at some length, as did this court in its October 16, 2025 Opinion and Order, the split in authority as to whether parties may by contract require a judge to perform certain judicial acts:

> As the Clark treatise explained, courts traditionally held that "[s]ince no litigant can force a judge to do a judicial act ... no litigant has an absolute right to have the court take another's property into its custody by the appointment of a receiver." 1 Clark on Receivers, § 48, at 52 (3d ed. 1959). Nevertheless, it is quite common for mortgage loan documents to contain "receivership clauses" under which the mortgagor consents to the appointment of a receiver after default, without regard to whether the mortgaged property is subject to waste or whether it provides adequate security for repayment of the mortgage debt. Because appointment of a receiver traditionally was within the court's equitable discretion, some courts have refused to appoint a receiver -- despite the presence of a receivership clause -- in cases where they would have denied appointment of a receiver otherwise. See, e.g., *Dart v. Western Sav. & Loan Ass'n*, 438 P.2d 407 (Ariz. 1968); *Chromy v. Midwest Fed. Sav. & Loan Ass'n*, 546 So.2d 1172 (Fla. Ct. App. 1989); *Sazant v. Foremost Invsts., N.V.*, 507 So.2d 653 (Fla. Ct. App. 1987) (receivership clause not binding on court where mortgagor had not committed waste and default did not place mortgagee at serious risk of noncollection); *Gage v. First Fed. Sav. & Loan Ass'n*, 717 F. Supp. 745 (D. Kan. 1989); *Barclays Bank, P.L.C. v. Davidson Ave. Assocs., Ltd.*, 644 A.2d 685 (N.J. Super. Ct. 1994) (receivership clause "usurps the judicial function" and thus violates public policy).
>
> Other courts have treated receivership clauses as presumptively but not conclusively enforceable. *Barclays Bank v. Superior Court*, 137 Cal. Rptr. 743 (Cal. Ct. App. 1977); *Riverside Props. v. Teachers Ins. & Annuity Ass'n*, 590 S.W.2d 736 (Tex. Ct. App. 1979*);*

> *Okura & Co. v. Careau Group*, 783 F. Supp. 482 (C.D. Cal. 1991); *Wellman Sav. Bank v. Roth*, 432 N.W.2d 697 (Iowa Ct. App. 1988).
>
> By contrast, there is significant recent authority supporting the view that a receivership clause alone provides a sufficient basis to appoint a receiver after the mortgagor's default. See, e.g., *Bank of America Nat'l Trust & Sav. Ass'n v. Denver Hotel Ass'n Ltd. Partn.*, 830 P.2d 1138 (Colo. Ct. App. 1992); *Fleet Bank v. Zimelman*, 575 A.2d 731 (Me. 1990); *Metropolitan Life Ins. Co. v. Liberty Ctr. Venture*, 650 A.2d 887 (Pa. Super. Ct. 1994); *Federal Home Loan Mortg. Corp. v. Nazar*, 100 B.R. 555 (D. Kan. 1989). Likewise, federal courts have routinely held receivership clauses in federally insured mortgages sufficient to justify the appointment of a receiver. See, e.g., *United States v. Berk & Berk*, 767 F. Supp. 593 (D. N.J. 1991); *United States v. Drexel View II, Ltd.*, 661 F. Supp. 1120 (N.D. Ill. 1987).

Comments, §6.

In recognizing the several historic, and, at times, mutually exclusive approaches, the Uniform Law Commission presented state legislatures two options:

> Subsection (b) includes bracketed alternatives. Under the first, a mortgagee is entitled to appointment of a receiver in the six circumstances listed in subsection (b). Under the second, these six circumstances would justify appointment of a receiver, but appointment would be subject to the court’s discretion rather than an entitlement.

Id.

Michigan's Legislature declined to adopt the first alternative which would have *entitled* mortgagees like Independent Bank to receiver appointments upon default. Instead, the Legislature chose the second option, vesting circuit courts with discretion to grant or deny receiver appointments despite the existence of a binding contractual provision.

Nevada, for instance, adopted the first alternative, entitling mortgagees to receiver appointments when the lien grantor contractually agrees to such appointments. See *Fed. Nat'l Mortg. Ass'n v. Westland Liberty Vill., LLC,* 138 Nev. 614, 621–22, 515 P.3d 329, 336–37 (2022). In that case, the Nevada court held that under its version of the Uniform Receiver Act, a mortgagor's signed consent to receiver appointment upon default creates a mandatory entitlement for the mortgagee, not a discretionary remedy. Nevada's Legislature deliberately chose "is entitled to" rather than "may appoint," establishing an enforceable private right that mortgagees can assert without relying on judicial discretion. *Id.*

As noted above, Michigan took the opposite approach. By adopting the "may appoint" language, the Michigan Legislature established that state courts retain ultimate authority to determine whether a receiver should be appointed in any particular case, regardless of contractual provisions.

This court correctly described Michigan law in its October 16, 2025 Opinion and Order. Notwithstanding the reckless, inaccurate, and inappropriate December 19, 2025 email that Leestma Management circulated to tenants, the court, absent application of the Assignments of Rents Act discussed below, would adhere to its determination that an evidentiary hearing is required.

Independent Bank is entitled to a receiver under the Assignment of Rents Act.

In its supplemental brief, the Bank contends that it is entitled to the appointment of a receiver based on its status as assignee of certain rent payments granted by the defendants. Copies of the assignments were attached to the Bank's brief in support of its December 22, 2025, "emergency" motion. The Bank does not identify any provision in the assignments, nor has the court found one, by which the defendants consented to the appointment of a receiver in the event of default. As explained below, however, the absence of such language is not dispositive of the Bank's claim.

In 2022, Michigan enacted a variation on the Uniform Assignment of Rents Act as MCL §§ 554.1051 - 1070. (the "Assignment of Rents Act"). See Overview, Strat. Alt. Dis. Bus. § 62:1:

> This statute seeks to bring uniformity to commercial real estate transactions by establishing a comprehensive statutory model for the creation, perfection, and enforcement of a security interest in rents. The Assignment of Rents Act enhances both the right to obtain a receiver and the receiver's ability to collect past due rent.

Id.

When an assignor of rents is entitled to a receiver is governed by Section 7 of the act which reads in relevant part as follows:

> Sec. 7. (1) An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if either of the following applies:
>
> (a) The assignor is in default and any of the following apply:
>
> (*i*) The assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default.

MCL 554.1057

Section 7(1) provides that "[a]n assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents" if specified conditions are met. The statute thus focuses on the assignee's entitlement and the status of the real property subject to the assignment, not on whether the assignment of rents is the exclusive source of authority for a receivership.

The court, of course, must interpret the language of this statute in accordance with the familiar principles set forth in the *McCormick* decision discussed above. *McCormick v. Carrier, supra.*

Subsection 7(1)(a) first requires that "the assignor is in default," a condition that in this case has been satisfied. Once default exists, the statute requires only one of the enumerated additional conditions. The first of those, subsection 7(1)(a)(i), states that entitlement exists if "[t]he assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default." The Legislature's use of the indefinite phrase "a signed document" is significant. It does not say "the assignment of rents," "this assignment," or even "the security instrument," but instead adopts deliberately broad language that encompasses any signed writing in which the assignor consents to a receivership upon default.

A mortgage that secures the same obligation and contains an express receiver clause plainly qualifies as "a signed document" within the meaning of subsection 7(1)(a)(i). The statute does not require that the assignee be a party to that document, only that the assignor agreed to the appointment of a receiver and did so in writing. Nor does the statute condition entitlement on the receiver consent being repeated in the assignment of rents itself. By choosing expansive language, the Legislature allowed courts to look beyond the four corners of the assignment and to consider the broader loan documentation governing the secured transaction.

Accordingly, where the assignor is in default and the mortgage authorizes the appointment of a receiver upon default, the statutory requirement in Section 7(1)(a)(i) is satisfied. Independent Bank, in enforcing the assignment of rents, may invoke that mortgage provision to establish an entitlement to a receiver under the Michigan statute, notwithstanding the absence of a receiver clause in the assignment itself.

By statute, Independent Bank is entitled to the appointment of a receiver.

The court will, if necessary, select the receiver.

The court encourages the parties to stipulate to the selection of a receiver. If the parties are unable to reach an agreement, the court will proceed in accordance with the governing court rule, MCR 2.622(B).

In its September 23, 2025, motion for the appointment of a receiver, Independent Bank nominated M. Shapiro Management Company, LLC. The defendants timely objected, questioning the qualifications of the Bank's proposed receiver. They advanced two of their own candidates, John Polderman[1] or Heather Gardner.

Absent a stipulation, the court will provide all parties an opportunity to be heard on the competing nominations. Each party will submit written materials addressing the qualifications of

[1] On March 20, 2025, this court appointed John Polderman receiver in a Business Court case at the request of Independent Bank. See *Independent Bank v. Koleasco, Inc., et al.*, Kent County Circuit Court Case No. 25-02377-CBB

its proposed receiver and responding to any objections raised to the opposing nominee. Each submission must be filed within 14 days.

The submissions must specifically address the factors set forth in subrule (B)(5), including the nominee's experience with the type of assets at issue, relevant business or legal expertise, ability to obtain any required bond, and any potential disqualification or conflict. The court may conduct a hearing if it determines that oral argument or the resolution of disputed factual issues is necessary.

After considering the parties' submissions and any argument presented, the court will select a receiver. The court emphasizes that it is not bound to appoint either party's nominee and may instead appoint a different receiver if warranted. The receiver selected by the court will act as a fiduciary for the benefit of all parties and the receivership estate. The court will state its rationale for the selection in a written order, consistent with the requirements of the court rule.

IT IS ORDERED.

This order does not resolve all pending matters before the court and does not resolve the case.

Dated: January 9, 2026
at Grand Rapids, Michigan.

Honorable Curt A. Benson