

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

INDEPENDENT BANK, a Michigan
banking corporation,

Case No. 25-20760-CBB

Plaintiff,

Hon. Curt A. Benson

v.

OPINION AND ORDER

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,

Defendant,

INTRODUCTION

On September 23, 2025, Independent Bank filed a verified complaint seeking contract damages, judicial foreclosure of several mortgages, and the appointment of a receiver. Filed concurrently with the complaint was an emergency ex parte motion requesting the immediate appointment of a receiver. Under the Receivership Act, MCL 554.1011–1040, a court may appoint a receiver without notice - or with notice but without a hearing - under certain limited circumstances.

The court held an informal video conference with counsel for all parties involved. During the conference, the court allowed the defendants to submit written objections, which they filed on October 1st. Independent Bank responded with a reply brief on October 6th. The following day, the defendants submitted "supplemental objections."

THE COMPLAINT

The Adelaide Pointe Project is a large-scale, mixed-use development located in Muskegon, Michigan. The development encompasses wet and dry marinas, boat storage facilities, a boater services building, a condominium complex, and a multiuse building designed to house a restaurant, retail shops, and office space.

According to the complaint, between 2023 and 2025, defendants Adelaide Pointe Building 1, LLC; Adelaide Pointe QOZB, LLC; Adelaide Pointe Boaters Services, LLC; Leestma Management, I.L.C.; Waterland Battle Creek Properties, LLC; Ryan M. Leestma; and Edwin J. Vanderploeg, Jr., as trustee of the Ryan M. Leestma Domestic Asset Protection Trust, entered into a series of promissory notes and related loan agreements with plaintiff Independent Bank to finance the Project. The total amount borrowed exceeded \$28 million. Each loan was secured by mortgages, security agreements, and personal guarantees.

By July 2025, two of the promissory notes had matured, but the Project remained incomplete. The borrowers failed to repay the matured loans, placing them in default under the loan documents. Independent Bank subsequently discovered that the Project had failed to pay property taxes, had left contractors unpaid, and was subject to collection actions by third parties.

The loan documents contained cross-collateralization agreements providing that a default under any one loan would constitute a default under all loans. Independent Bank invoked these provisions, declaring all loans to be in default. As of September 12, 2025, the outstanding debt totaled \$28,011,385.57 in principal, plus \$114,370.59 in interest, along with additional costs and attorney fees.

Independent Bank filed this action seeking judgments for breach of the promissory notes and guarantees, judicial foreclosure of the mortgaged properties, and appointment of a receiver to manage or sell the collateral assets. The Bank contends that absent the appointment of a receiver, its collateral is at risk of deterioration or loss of value. The Bank further asserts that the loan documents contractually authorize the appointment of a receiver upon default.

The mortgage documents contain two relevant provisions addressing receivership. Section 5.1(g) provides that upon the occurrence of an Event of Default, the Mortgagee may apply for the appointment of a receiver "as a matter of right" and "without regard to, or the necessity to disprove, the adequacy of the security for the Indebtedness or the solvency of the Mortgagor." The provision further states that nonpayment of taxes, assessments, insurance, or utility rates "shall constitute waste" and entitle the Mortgagee to exercise remedies under MCL 600.2927.

Section 5.5 provides that upon or after the filing of a foreclosure suit, the Mortgagee "shall be entitled to have a court appoint a receiver of the Property." This appointment may be made before or after sale, with notice to the Mortgagor but without notice to any other person, and "without regard to the solvency of the person or persons, if any, liable for the payment of the Indebtedness and without regard to the value of the Property." The section further authorizes the Mortgagee itself to serve as receiver and grants the receiver broad powers to collect rents, manage the property, and apply net income toward the outstanding indebtedness or superior liens.

Based on these contractual provisions and the defendants' defaults, Independent Bank requests that this Court appoint a receiver, authorize foreclosure sales, direct that sale proceeds be applied to the outstanding indebtedness, and grant such further equitable relief as the Court deems appropriate.

THE DEFENDANTS' OBJECTIONS

Defendants characterize the Bank's receivership motion as a bad-faith attempt to circumvent a recently executed Forbearance Agreement that was intended to provide them breathing room until November 15, 2025. Defendants contend there is no genuine emergency, no threat to the Bank's collateral, and that the alleged defaults cited by the Bank were either known before the Forbearance Agreement was signed or have since been cured. Defendants position themselves as responsible developers who have transformed a contaminated, abandoned industrial site into a thriving \$85 million mixed-use development that now employs 150 people. They argue that the Bank's aggressive posture - including refusing to release \$600,000 of the borrowers' own cash - has actually exacerbated the Project's short-term cash flow problems rather than protected the Bank's interests.

LAW AND ANALYSIS

A word about mortgages and contracts

The loan documents and mortgages in this case permit the lender to appoint a receiver upon default of the loans. One might be forgiven for assuming this resolves the issue. After all, "[i]f the language of the contract is unambiguous, [the Court must] construe and enforce the contract as written." *Quality Prods. & Concepts Co. v. Nagel Precision, Inc.*, 469 Mich. 362, 375 (2003). "[A]n unambiguous contractual provision is reflective of the parties' intent as a matter of law. Once discerned, the intent of the parties will be enforced unless it is contrary to public policy." *Id.*; see also *Rayford v. Am. House Roseville I, LLC*, — N.W.3d —, No. 163989, 2025 WL 2177754, at 4 (Mich. July 31, 2025) (listing equitable defenses to contracts such as "unconscionability, duress, fraud, waiver, estoppel, and violations of public policy").

Nothing suggests that the loan documents in this case implicate any of the traditional equitable defenses.

The matter is not so straightforward, however. Receivership is an equitable remedy, not a contractual one. The receiver functions as an officer of the court rather than as an agent of the

parties. *Ypsilanti Fire Marshal v. Kircher*, 273 Mich. App. 496, 528, 730 N.W.2d 481, 502–03, appeal granted in part, cause remanded, 480 Mich. 910, 739 N.W.2d 622 (2007).

It is well settled law in Michigan that when a receiver has taken possession of property, such possession is that of the court itself. It is clear that it was the duty of the court to manage or dispose of the property for the best interests of all concerned.

Chronowski v. Park Sproat Corp., 306 Mich. 676, 685, 11 N.W.2d 286, 289 (1943)(Citation omitted)

See also, *Uhl v. Wexford Co.*, 275 Mich. 712, 716, 267 N.W. 775, 776 (1936)("In Michigan we are already committed to the view that, when a receiver has taken possession of property, such possession is that of the court itself.")

Because appointing a receiver requires the court to assume ongoing supervisory responsibilities, a judge cannot surrender its discretion merely because the parties agreed to such an appointment in advance. Put differently, while private parties may govern their own relationship through contract, they cannot, by agreement, dictate the powers or duties of the court.

Additionally, even when the parties have expressly consented to a receiver in their contract, that agreement cannot supersede the court's equitable jurisdiction or its responsibility to ensure fairness, including to third parties who may be affected. For these reasons, judges often insist on evaluating equitable considerations before appointing a receiver, even when the parties have provided for one in their loan documents.

The court's own research has not found any Michigan cases on point. But one federal case is instructive: *LNV Corp. v. Harrison Fam. Bus., LLC*, 132 F. Supp. 3d 683, 688 (D. Md. 2015)

In *LNV Corp.*, the judge discusses two distinct approaches courts employ when addressing loan documents containing provisions for receiver appointment upon default. The first approach treats an express contractual agreement to appoint a receiver upon default as sufficient grounds for appointment. Courts following this view consider the parties' advance consent dispositive and dispense with any further equitable analysis. The second approach holds that such contractual provisions cannot bind the court because receivership is an equitable remedy and the receiver acts as an officer of the court. Under this framework, the court must still evaluate traditional equitable factors, including the risk of property loss, the inadequacy of legal remedies, and the potential for irreparable harm. While the existence of a receivership clause remains a significant factor favoring appointment, it does not eliminate the court's discretion.¹

¹ The judge in *LNV Corp.* decided the case under federal law.

Following the approach of the federal judge in *LNV Corp.*, this court will assess the traditional equitable factors governing receiverships. The court will consider as a significant factor the Project's advance agreement to the appointment of a receiver in the event of a default.

The general law of receiverships

M.C.L. 600.2926 states:

Circuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law.... In all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law. Subject to limitations in the law or imposed by the court, the receiver shall be charged with all of the estate, real and personal debts of the debtor as trustee for the benefit of the debtor, creditors and others interested.

The Court of Appeals has provided this generalized description of the statute:

The statute provides that circuit court judges “may appoint receivers in all cases pending where appointment is allowed by law.” The phrase “allowed by law” does not require the presence of statutory authority, although such exists in certain situations. Rather, this Court has interpreted that phrase to mean “(1) those cases where appointment of a receiver is provided for by statute and (2) those cases where the facts and circumstances render the appointment of a receiver an appropriate exercise of the circuit court's equitable jurisdiction.” *Petitpren v. Taylor School Dist.*, 104 Mich.App. 283, 294, 304 N.W.2d 553 (1981). The appointment of a receiver is a harsh remedy and should only be resorted to in extreme cases. If less intrusive means are available to effectuate the relief granted by a trial court, a receiver should not be used. The appointment of a receiver may be appropriate when other approaches have failed to bring about compliance with the court's orders. *Petitpren* at p. 295, 304 N.W.2d 553.

Band v. Livonia Assocs., 176 Mich. App. 95, 104–05, 439 N.W.2d 285, 290 (1989)

It has long been settled that “[a] court of equity has inherent power to appoint a receiver” and that “[t]he appointment of a receiver is a harsh proceeding and should only be resorted to in extreme cases.” *Mich. Minerals v. Williams*, 306 Mich. 515, 525; 11 N.W.2d 224 (1943). Among other reasons, “[a] receiver may be appointed where necessary to prevent fraud or to protect property against imminent danger of loss.” *Weathervane Window, Inc. v. White Lake Constr. Co.*, 192 Mich. App. 316, 322; 480 N.W.2d 337 (1991). “The primary purpose of a receiver is to preserve property and to dispose of it under order of the court.” See *id.*

But trial courts must be very cautious in appointing receivers. The Michigan Supreme Court has long recognized the harshness of this extraordinary remedy:

It has long been the law in this state that no court has unlimited discretion to put private estates into the hands of receivers, and that the appointment of a receiver is a harsh proceeding which should only be resorted to in extreme cases.

Michigan Mins. v. Williams, 306 Mich. 515, 525, 11 N.W.2d 224, 228 (1943), quoting with approval, *People v. Israelite House of David*, 246 Mich. 606, 225 N.W. 638, 642, (1929).

The primary purpose of a receiver is to preserve property and to dispose of it under the order of the court. *Westgate v. Westgate*, 294 Mich. 88, 91, 292 N.W. 569 (1940); See also, *Band v. Livonia Assocs.*, 176 Mich. App. 95, 104, 439 N.W.2d 285, 290 (1989)

Moreover, “the appointment of a receiver is a remedy of last resort and should not be used when another, less drastic remedy exists.” *Ypsilanti Charter Twp. v. Kircher*, 281 Mich. App. 251, 273, 761 N.W.2d 761, 776 (2008).

This case warrants an evidentiary hearing

Of course, Independent Bank is asking this court to appoint a receiver without conducting a hearing. “A court may issue an order appointing a receiver after notice and without a prior hearing if the circumstances require issuance of an order before a hearing is held.” 65 Am. Jur. 2d Receivers § 44.

The Receivership Act contemplates such action:

(1) Except as otherwise provided in subsection (2), the court may issue an order under this act only after notice and opportunity for a hearing appropriate in the circumstances.

(2) The court may issue an order under this act under the following circumstances:

(a) Without prior notice if cause exists to require issuance of an order before notice is given.

(b) After notice and without a prior hearing if cause exists to require issuance of an order before a hearing is held.

(c) After notice and without a hearing if no interested party timely requests a hearing.

MCL 554.1013

As a general rule, a court need not always hold a formal hearing before appointing a receiver. *Hofmeister v. Randall*, 124 Mich. App. 443, 447, 335 N.W.2d 65, 67–68 (1983). But the appointment of a receiver without a hearing is typically confined to situations where the underlying facts are undisputed. *Id.*; see also *Petitpren v. Taylor Sch. Dist.*, 104 Mich. App. 283, 297, 304 N.W.2d 553, 559 (1981). That is not the case here.

Here, there are numerous material factual disputes that preclude the appointment of a receiver at this early stage. The parties sharply disagree over the current value of the Bank's collateral, the financial viability of the Project, the cause and extent of any liquidity problems, and whether any uncured events of default presently exist. They also dispute the effect of the August 22, 2025 Forbearance Agreement, including whether it bars this action until November 15, 2025, and whether the Bank's motion was brought in good faith. The evidence concerning prospective risk of deterioration and the likely impact of receivership on the Project's value is likewise conflicting. These questions cannot be resolved on affidavits and argument alone, and must instead be determined at trial upon a full evidentiary record.

CONCLUSION

Plaintiff's motion for the appointment of a receiver is denied without prejudice.

The court will schedule an informal status conference to schedule a hearing date and to establish a briefing schedule.

IT IS ORDERED.

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

Dated: October 16, 2025
at Grand Rapids, Michigan.



Honorable Curt A. Benson