

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-003106

11/10/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

KEITH DEERING, et al.

LANCE R BROBERG

v.

GARY WHITING, et al.

GREGORY G MCGILL

WADE M BURGESSON
PAUL A CONANT
MARK DEATHERAGE
JARED C SIMMONS
AMY J GITTLER
DONALD F ENNIS
STEVEN D JEROME

MINUTE ENTRY

The court has had the Receiver, Edward M. Burr, Jr. of Sierra Consulting Group, LLC's Motion (I) for Discharge of Receiver and his Counsel; (II) To Approve Final Accounting; and (III) for Exoneration of the Receiver's Surety and the Joint Motion of Receiver, Edward M. Burr, Jr. and Intervenor, David Roberts, Sam Dalembert and Hetal Shah, M.D. and Defendants, Dark Comet Games, LLC, Fresh Start Studios, LLC and Karl And Diana Hiatt under advisement and enters the following rulings.

Receiver's Motion (I) for Discharge of Receiver and his Counsel; (II) To Approve Final Accounting; and (III) for Exoneration of the Receiver's Surety and the Joint Motion of Receiver is GRANTED.

SUPERIOR COURT OF ARIZONA
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The Joint Motion for Approval of Return of Assets to Receiver and Approval of Indebtedness for CME/CMG Pursuant to Settlement Agreement is GRANTED.

Receiver's Motion for Approval of Final Accounting and Exoneration of Surety Bond.

The motion to approve the Receiver's accounting and exonerate the bond was opposed by defendants, Gary and Vicki Whiting, Garrick Properties, LLC, Garvick Enterprises, LLC, Vista Ridge I & II, LLC, MMOGULS, Inc., and Imran Safiulla. As the court understands, the defendants' objections are: 1. the Receiver delegated duties to Tim Jenson; 2. payments to Dark Comet, LLC by the Receiver were never authorized; 3. the joint venture agreement was not valid; 4. the accounting was not properly supported by a balance sheet and/or other accounting reports; 5. the Receiver did not investigate the use of the \$50 million in contributed capital; 6. the Receiver failed to contact Mr. Whiting and "took sides;" 7. Receiver, Edward Burr was not involved in the company until July even though he was appointed the Receiver; 8. Receiver, Mr. Burr would not return Mr. Grabois's telephone calls; and 9. Dale Belt talked to Fresh Start representatives before Mr. Burr was appointed as Receiver.

The evidence showed that the Order Appointing Receiver signed by Judge Myers allowed Mr. Burr's assistants to be involved in the receivership as long as there was no delegation of Mr. Burr's primary responsibilities. The receivership order directed Mr. Burr to take over the assets, affairs, management, operation and control of CMG and CME, including collecting all monies due and owing and paying all operating, maintenance, repair and administrative expenses incurred on or after the receiver's employment, and to pay necessary obligations during the period of the receivership as the receiver deemed necessary and advisable. The order also gave the receiver the right to hire third parties or affiliated entities for management and related duties as the receiver deems necessary.

The evidence also indicated that when the receiver's representative, Dale Belt, arrived at the place of business he found no employees, the game, which was the primary asset of the corporation, had not been completely finished, that CME had filed bankruptcy and the corporate situation was in chaos i.e. there was a battle over control of the entity and who the officers were. The court finds that the receiver never had sufficient facts to decide which "side" was correct and that the receiver did not "take sides" but rather exercised his powers and responsibilities to control the corporation as best he could.

The court finds that the engagement of Mr. Jenson, irrespective of his past record, was an appropriate act by the receiver to gain information about the history and business of the company.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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The court further finds that there was nothing inappropriate about paying Dark Comet for its services.

Defendants raised appropriate questions about several items in the accounting which the court finds that Mr. Belt adequately addressed including but not limited to, the payment of Mr. Jenson and his hotel and travel expenses; the payment of child support which had been withheld from an employee's wages; and the payment of its fees for serving as receiver.

No evidence was presented that the receiver misappropriated any assets to its own use or improperly expended assets of the receivership. In fact, to the contrary, the receiver appropriately acted to close the sale of the company's tax credit which resulted in more than a \$2 million gain to the company (See Exhibit 11). Although evidence was presented to support Mr. Whiting's claim that he was improperly removed as the director of the corporation, that issue was not before the court and the court renders no opinion thereon. The court does find that the receiver did nothing to hinder Mr. Whiting's interest that was not authorized by the receivership order.

Joint Motion for Approval of Indebtedness for CME/CMG.

Cheyenne Mountain Entertainment ("CME") and Cheyenne Mountain Games, Inc. ("CMG") seek approval of the execution of the 24-month promissory note bearing 12% annual interest to Karl and Diana Hiatt in the sum of \$473,364.61 which represents expenses incurred in maintaining the company's assets while in possession of Dark Comet.

It was obvious to the court that had the Hiatts not advanced these funds to Dark Comet that the game which is the valuable asset of CME could have been lost by virtue of the bankruptcy, the failure to operate and the loss of the licensing rights from MGM Studios. It is also apparent to the court that this arrangement is being accomplished through a settlement agreement of the issues in CV2010-025559 and if that action is not settled then the licensing rights to the game may well be lost.

The court finds that it is in the best interest of all of the parties to all the litigation to approve the settlement including the issuance of the promissory note and the right to invest further secured funds irrespective of the disputes among the parties.