

**FILED**

**8/28/2017 03:47 PM**

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

**Jo McElwee  
Camden County  
Circuit Clerk**

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,  
PLAINTIFF,**

**VS.**

**CASE # 26V010200965**

**OSAGE WATER CO.,  
DEFENDANT**

**ORDER APPROVING REPORT OF RECEIVER AND AUTHORIZING THE FILING OF FEDERAL BANKRUPTCY PROCEEDING**

Now on this day, the Court having considered the contents of the file herein, the cited case law authority herein and the recent report of the Receiver and Special Master, does hereby make the following order and findings:

This case was originally filed December 31<sup>st</sup>, 2002 and in the interim almost 15 years has passed while Defendant has been subject to these proceedings and to the ministrations of the Missouri Public Service Commission, Plaintiff herein.

Shortly after the case was filed a buyer for the assets was found. Weekly and then monthly reports were filed By Plaintiff with regard to the administrative proceeding in The Missouri Public service Commission for the sale of assets of Defendant. This petition set the debts of the Defendant at 1.13 Million in indebtedness plus a past due obligation to the US Treasury. The petition alleged an inability of the Corporation to grow its business sufficiently to pay their debt and cited bad relations with existing customers as well. The Petition filed by Plaintiff suggested a danger of service disruption due to deferred maintenance on the assets of the corporation.

The offer made was insufficient to pay most of the existing debt, but it would have likely been eagerly accepted by the creditors of the Defendant if the allegations of the petition were true. The proposed buyer offered \$950,000 as measured by some formula not apparent from the record. The Missouri Public Service Commission received the formal application July 2<sup>nd</sup>, 2004, during a recess of the bifurcated hearing on the petition.

The reports filed with the Court indicated that approval of the bid by the Missouri Public Service Commission, Plaintiff herein, depended on clarification of two issues. One dealt with the post sale service rate to be charged. The second issue required clarification of the title to the sewerage system being operated in Cedar Glen subdivision. Ultimately, the bid of Missouri-American Water Company was rejected. The order of the Commission denying the application was issued June 9<sup>th</sup>, 2005 and became effective June 19<sup>th</sup>, 2005. The denial declined to approve the application because the bid did not dispose of all of the assets of Defendant. Shortly after this order of dismissal, the Missouri Department of Natural Resources issued a Notice Of Violation due to the discharge of effluence into a tributary of a Missouri waterway.

Early the next month Plaintiff filed a Motion to Conclude Trial and for immediate appointment of a Receiver. The trial, having been commenced March 8<sup>th</sup>, 2004, ended in the Court's order of October 21<sup>st</sup>, 2005.

After appointment of the Receiver no further attempt to sell the assets was undertaken for a period of years. The receiver engaged in defense of several litigation cases involving the prior operation of the business and affairs of Defendant. The Cedar Glen issue resulted in litigation being filed to resolve the questions raised regarding ownership of the land wherein the sewer system was located. The litigation did not move swiftly through the trial courts due to issues created by creditors seeking compensation for investments in the water company's business. These litigations were apparently resolved by September 2014 when the Receiver reported his efforts to sell the assets of the Defendant had yielded four bids, all significantly less than the original bid of Missouri American Water company made so many years earlier.

Since the rejection of the bids for the sale of assets above mentioned, the Receiver appointed by the Court has on behalf of the creditors and Plaintiff on behalf of the customers of Osage Water reviewed the several bids for sale of the business. Each bid has failed to sell all the assets or has failed to respond to the bids' request for cash payment. As far as is known to the Court the issues raised by the administrative agencies (including Natural Resources which resulted in payment of a "small fine" and renovation of the Cedar Cove sewer system) have been adequately addressed. The Receivership is operating the system but not generating sufficient funds with which to resolve the solvency issue originally raised.

In 2014 the Missouri American Water Company submitted another bid to buy the assets of the Defendant. This bid was for a little more than a third of the original bid. On an earlier occasion Missouri American Water Company was invited to submit another bid by the Receiver but declined to do so. The recently submitted bid reflects a change of perspective as to the condition of the affairs of Defendant and of its assets.

The Plaintiff has suggested the Court consider the authorization of the Receiver to file a bankruptcy. The Court has a serious question that any of the presently proposed buyers will be able to navigate the Plaintiff's requirements for approval of the sale. A stay order previously proceeded from a Bankruptcy filing but the case was dismissed from Bankruptcy Court for reasons that are not immediately apparent to this Court.

No party can cite any Missouri authority for the filing of a bankruptcy action by a Receiver, but, Plaintiff has cited Federal Court rulings in which Receivers were approved for Petitioners in Bankruptcy. The Court believes these citations are a correct recitation of Federal Bankruptcy Court jurisdiction over Receiverships. **In Re Central Mortgage 50 BR 1010 (SD Texas 1985) and In Re Sparkling Bldg Group 316 B.R. 466 (N.D. Texas, 2004)**. Neither can any party cite to the Court an authority for the Receiver to transfer the assets of the Defendant free of liens and encumbrances. The Bankruptcy Trustee could achieve a result more beneficial to the creditors than can be achieved by a Trustee in a State Court action.

Statutory authority for the action requested by Plaintiff and Receiver herein appears to lack much specificity as to what actions may be authorized by the Court or undertaken by the Receiver. Legal authorities appear to believe the statutes have invested the Court wide discretion. The action undertaken in this proceeding appears to have been brought pursuant to **Sec. 515.240 et seq**

**R.S.Mo.2000**, which appears has been replaced by the provisions of **Section 515.500 et seq RSMo 2016** the adoption of which repealed the statutory authority pursuant to which this Receivership was petitioned. This new statutory scheme authorizes the Receiver to exercise all such power as the Court may confer. This appears to be a codification of the prior law. **Sec. 515.545.R.S.Mo.2016**.

**Section 351.494 R.S.Mo. 2000** is the statutory authority for the dissolution of a corporation. There is no request for dissolution of Osage Water herein, however, this statute permits of the appointment of a Receiver in some cases and appears to grant the Court authority to initiate “other action” when “required”. **Sec. 515.545.1 (11)RSMo 2016**

During the course of the Receiver’s operation of the affairs of the Defendant, litigation has been commenced and threatened by one of the creditors against the Receiver. The filed action pertained to the use of water by Receiver from a well located on land owned by the creditor. The further current threat involves an alleged abandonment of assets of the Defendant to another water supplier without compensation.

The Court believes that unless the Court permits the filing of Bankruptcy that no bid acceptable to the Plaintiff and to the creditors of Defendant will be obtained. The chance of that happening ended when the Plaintiff rejected the bid of Missouri- American Water Company. The history of this case bears this out. In response to the Court’s most recent order for bids, there were bids filed by two of the creditors of Osage Water Company. It appears to this Court, because of a dearth of authority on the subject, that acceptance of either of such bids might result in further litigation and might result in favoring one creditor over another. The Court is of the opinion that after 15 years since the petition was filed (less than that since the Receiver was appointed) that the issues that led to the original application to appoint the receiver still exist. The Court further believes that acceptance of any bid submitted so far would not resolve those same issues. The acceptance of a bid from a creditor would not likely lead to resolution of these issues. There is nothing to be gained from continued attempts to sell the assets in this proceeding. The continued operation of this Receivership is antithetical to the resolution of the causes for the Plaintiff to have instituted the petition. The history of the case causes the Court to conclude that no further efforts herein to resolve the problems encountered by Defendant can be expected to succeed, saving only the filing of bankruptcy.

During the course of the operation of the receivership, a trial was held in Camden County Circuit Court which resulted in judgment having been entered in the amount of One Million Forty-one Thousand Eight Hundred Six Dollars (\$1,041, 806) which lawsuit. This Court is not immediately aware as to when this cause of action accrued or as to what actions were taken by any party to resolve the same.

With regard to the Plaintiff’s ultimate rejection of the Missouri- American Water Company original bid, there is nothing in the file to indicate that Plaintiff’s actions were arbitrary. The shame of this episode is that Receivership and the Receiver are locked into endless operation or continued litigation.

The Court rejects the bids presented in response to the last publication as not complying with the requests contained therein.


The Court authorizes the Receiver to institute an action in Federal Bankruptcy Court under any applicable chapter of Bankruptcy Law that is thought will best accomplish the goals of Receiver’s appointment. The Court sustains Receiver’s motion for the Court to authorize filing of Bankruptcy action.

The Court will retain jurisdiction of the case until the assets have been disposed of appropriately.

The report filed herein by the Court Appointed Master herein is approved. The Receiver is authorized to file in Federal Bankruptcy Court an action for liquidation of assets and discharge of debt. The Receiver is authorized to set aside Twenty-five Thousand Dollars to defray the cost of the bankruptcy filing including the payment of an attorney to initiate and conclude the proceedings and for the payment of all additional costs of the proceedings. The Special Master herein is awarded of fee of One Thousand Dollars.

August. 28th, 2017

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Dated



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Robert M. Liston  
Circuit Judge, Senior