

**IN THE CIRCUIT COURT OF THE THIRTY-FIFTH JUDICIAL CIRCUIT
OF MISSOURI, DUNKLIN COUNTY, MISSOURI**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 21DU-CC00015
)	
DUNKLIN COUNTY REORGANIZED)	
COMMON SEWER DISTRICT #1,)	
)	
Defendant.)	

JOINT MOTION TO ENTER RECEIVERSHIP ORDER

The parties jointly move the Court to enter a receivership order in this matter, in the form of Attachment A hereto, appointing the City of Malden, Missouri, as receiver for Dunklin County Reorganized Common Sewer District #1 (the “District”). The City of Malden, Missouri, already treats wastewater from the District, is adjacent to the District, and has the capacity and willingness to operate the District while a new Board is appointed or elected.

Suggestions in Support

Simultaneous with the filing of this motion, the United States brought an action seeking declaratory and injunctive relief against Defendant District, arguing that by vacating its Board of Trustees, Defendant was violating Missouri law and the provisions of its bond resolution with Plaintiff. While the remaining members of Defendant’s Board of Trustees do not wish to continue serving in that capacity, the parties agree that the District’s sewer system needs to continue providing service while this suit is pending, and as such, a receivership is the course best calculated to serve the interests of all parties involved, as the customers of the Defendant District.

“[R]eiverships are recognized equitable tools available to the courts to remedy otherwise uncorrectable violations of the Constitution or laws.” *Plata v. Schwartzenegger*, 603 F.3d 1088,

1093-94 (9th Cir. 2010). “It is generally recognized that the district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) (citation and internal punctuation omitted). “This discretion derives from the inherent powers of an equity court to fashion relief.” *Id.* (citation omitted). The appointment of a receiver in equity “is an ancillary remedy which does not affect the ultimate outcome of the action.” *Nat’l P’ship Inv. Corp. v. Nat’l Hous. Dev. Corp.*, 153 F.3d 1289, 1291 (11th Cir. 1998) (citing *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923)).

Factors favoring the appointment of a receiver include the imminent danger of property being injured or diminished in value, the inadequacy of available legal remedies, the probability that harm to the plaintiffs by denial of the appointment would be greater than the harm to parties opposing appointment, the probability of the plaintiffs’ success in the action, and the prospect of irreparable injury to the plaintiffs’ interests in the property. *U.S. Bank Nat. Ass’n v. Nesbitt Bellevue Prop. LLC*, 859 F. Supp.2d 602, 610 (S.D.N.Y. 2012). Courts have commonly appointed receivers where failing to do so poses a threat of environmental harm. *See, e.g., United States v. Acadia Woods Add. #2 Sewer Co.*, 41 F. Supp.2d 632, 633 (W.D. La. 1999) (appointing receiver to run wastewater treatment plant); *United States v. Alisal Water Corp.*, 326 F. Supp.2d 1010, 1012 (“a receivership is particularly appropriate where public health issues are implicated”).

Rule 66, Fed. R. Civ. P. addresses receiverships, providing:

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

“Rule 66 imposes no particular requirement with regard to motions for receivers.” *Haase v. Chapman*, 308 F. Supp. 399, 406 (W.D. Mo. 1969). Where, as here, no important factual

allegations upon which a receivership is sought are controverted, the motion “may be granted in the manner of a judgment on the pleadings or a summary judgment,” without a hearing. *Id.*

Wherefore the parties seek entry of a receivership order, appointing the City of Malden, Missouri, in the form attached as Attachment A.

DATED: March 2, 2021

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that on March 2, 2021, a true and accurate copy of the foregoing was filed with this Court via CaseNet, and therefore served on all parties of record. In addition, on March 2, 2021, a true and accurate copy of the foregoing was sent via e-mail to the following:

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/s/ Anthony J. Debre

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