

KREKELER STROTHER, S.C.

ATTORNEYS AT LAW

Craig E. Stevenson

August 28, 2013

Attorney Roger A. Allen
Madison City Attorney's Office
210 Martin Luther King Jr Blvd Rm 401
Madison WI 53703-3345

VIA EMAIL ONLY TO:
rallen@cityofmadison.com

Re: Shamrock Bar Liquor License
Our Client: JJ O'Connell Family Limited Partnership

Dear Attorney Allen:

At last Wednesday's Alcohol Licensing Review Committee meeting, I appeared on behalf of my client, the JJ O'Connell Family Limited Partnership, in opposition to the application of Robert Mahr for a liquor license in connection with the Shamrock Bar, located at 117 W. Main Street, Madison.

At the conclusion of the ALRC meeting, I understood that the City Attorney's Office would be looking for proof of whether Mr. Mahr (and/or his entity) has lawful possession of the Shamrock Bar premises. This letter will attempt to address that issue, and my client's concerns with the applicant's possession of the Shamrock Bar premises.

As you know, my client holds a judgment against the former owner of the Shamrock Bar, Glenn Jahns/Rainbow Clover, LLC. My client also holds a receiver's lien in all assets of the prior business, including equipment, inventory, goodwill, the leasehold, and any other assets of the business. My client fully intends to pursue its judgment and lien rights, particularly with respect to collateral we reasonably believe may still be located at the Shamrock Bar premises. We will also oppose any attempt of Mr. Mahr to use or continue to exercise control over my client's collateral, including the goodwill.

With respect to the leasehold of the Shamrock Bar premises, the court-appointed receiver, Rebecca DeMarb, who was appointed to collect the assets of the bar and its former owner, Glenn Jahns/Rainbow Clover, LLC, has specifically requested information concerning the former owner's leasehold interest. That request was initially made to Mr. Jahns via letter on August 14, and another request was made more recently to the landlord, Larry Lichte. Copies of the receiver's correspondence are attached.

As noted in the receiver's correspondence, the receiver asserts that any leasehold interest of the former owner is an asset to which she is entitled under the order appointing her as receiver. As of the date of this letter, the receiver has not received any information concerning the leasehold

Attorney Allen
August 28, 2013
Page 2

from either party. My client, through the receiver, intends to continue pursuit of the leasehold interest of the debtor in the Shamrock Bar premises, which is collateral for my client's judgment.

Relevant case law supports my client's assertion that the leasehold interest of Glenn Jahns/Rainbow Clover, LLC vests in the court-appointed receiver. The Wisconsin Supreme Court has held that the leasehold of a judgment debtor passes to a supplemental receiver, along with all other property (including good will), upon appointment of the receiver:

It follows that when the commissioner...appointed the receiver of the debts, property, equitable interests, rights, choses in action, chattels, business, and good will of the judgment debtor, all of his beneficial interest therein passed by operation of law to the receiver in so far as necessary to effectuate the purposes of supplementary proceedings. Although the leasehold was not expressly mentioned in the order, [the judgment debtor's] rights and interest therein were included in the terms "property, equitable interests, rights," etc.

United States Rubber Products, Inc. v. Twin Highway Tire Co., 233 Wis. 234, 244 (Wis. 1940).

In the present matter, the order appointing the receiver vested the receiver with "all the property, equitable interests, claims, assets, effects rights and things in action of the Defendants;" language very similar to the order in the above-cited case. Therefore, the leasehold held by Defendants Glenn Jahns and/or Rainbow Clover, LLC passed to the receiver upon entry of that order.

It is my understanding that both the landlord and Mr. Mahr claim that they have entered into a new lease; however, because the issue regarding the Glenn Jahns/Rainbow Clover, LLC leasehold and the receiver's claim in the leasehold remain unresolved, the validity of the purported new lease is questionable. To the extent that the receiver has rights under the Glenn Jahns/Rainbow Clover, LLC lease, the receiver is entitled to preserve the value of the leasehold for the benefit of the judgment creditor.

If I can be of further assistance in this matter, please advise.

Sincerely,

KREKELER STROTHER, S.C.

By:


Craig E. Stevenson

Enclosures

Stevenson, Craig

From: Rebecca DeMarb [rdemarb@kerkmandunn.com]
Sent: Tuesday, August 27, 2013 11:28 PM
To: larry@empirerealtycompany.com
Cc: Stevenson, Craig; Carol Mays; Rebecca DeMarb
Subject: Shamrock Bar
Attachments: Shamrock Receiver Order.pdf

As Dale Peterson has probably communicated to you, I have been in contact with him regarding the lease for the Shamrock Bar. Craig Stevenson is representing the judgment creditor. I am the receiver appointed because of the judgment in Dane County Case No. 10 CV 2175. I believe you have a copy of the Order Appointing Receiver. However, I am attaching another copy for your reference.

As receiver, I am charged with preserving assets of the debtor, Rainbow Clover, LLC, to liquidate them and apply the proceeds to the judgment held by the judgment creditor, JJ O'Connell Family Limited Partnership.

I understand that you entered into a lease with Rainbow Clover, LLC, for the premises from which the Shamrock Bar operated. That lease is an asset of Rainbow Clover, LLC, and, therefore, I am authorized to recover its value. Please send me a copy of the lease and any notices that you provided to Rainbow Clover, LLC, regarding a default on the lease or a termination of the lease. Please send me this information by Friday of this week.

I intend to cure whatever defaults exist on the lease to preserve its value for the benefit of the judgment creditor. Although I have requested complete turnover from Rainbow Clover, LLC, it has not complied and I do not have a copy of the lease. Accordingly, I cannot cure any default immediately.

If you are being represented, please forward this email to your attorney and ask him or her to contact me.

Thank you,

Rebecca DeMarb

Rebecca R. DeMarb
Kerkman Dunn Sweet DeMarb
121 S. Pinckney St., Suite 525
Madison, WI 53703
Main: (608) 310-5500

Stevenson, Craig

From: Rebecca DeMarb [rdemarb@kerkmandunn.com]
Sent: Friday, August 23, 2013 2:19 PM
To: hdpeterson@stroudlaw.com
Cc: Stevenson, Craig
Subject: Shamrock/Lichte

Dale,

I want to apologize for our game of phone tag over the last week or so. As I told you in a voicemail message on Tuesday, Craig Stevenson is representing the judgment creditor. I am the receiver appointed because of the judgment in Dane County Case No. 10 CV 2175. I believe you have a copy of the Order Appointing Receiver. However, I am attaching another copy for your reference.

As receiver, I am charged with preserving assets of the debtor, Rainbow Clover, LLC, to liquidate them and apply the proceeds to the judgment held by the judgment creditor, JJ O'Connell Family Limited Partnership.

I understand that Mr. Lichte entered into a lease with Rainbow Clover, LLC, for the premises from which the Shamrock Bar operated. That lease is an asset of Rainbow Clover, LLC, and, therefore, I am authorized to recover its value. Please send me a copy of the lease and any notices that Mr. Lichte provided to Rainbow Clover, LLC, regarding a default on the lease or a termination of the lease.

I intend to cure whatever defaults exist on the lease to preserve its value for the benefit of the judgment creditor. Although I have requested complete turnover from Rainbow Clover, LLC, it has not complied and I do not have a copy of the lease. Accordingly, I cannot cure any default immediately.

If you are not representing Mr. Lichte, please let me know as soon as possible.

Thank you,
Rebecca

Rebecca R. DeMarb
Kerkman Dunn Sweet DeMarb
121 S. Pinckney St., Suite 525
Madison, WI 53703
Main: (608) 310-5500
Direct: (608) 310-5502
Cell Phone: (608) 931-9976
Fax: (414) 277-0100
rdemarb@kerkmandunn.com
www.kerkmandunn.com

Pursuant to Circular 230 promulgated by the Internal Revenue Service, if this email, or any attachment to it, contains advice concerning any federal tax issue or submission, you are advised that it is not intended or written to be used, and that it cannot be used, for the purpose of avoiding federal tax penalties unless otherwise expressly stated.

The information in this message may be confidential, is intended only for the use of the named recipient and may be legally privileged. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this email, or any of its contents, is strictly prohibited. If you have received this email in error, please return it

KERKMAN DUNN
SWEET DeMARB

A Partnership of Limited Liability Corporations

Suite 525
121 S. Pinckney St.
Madison, WI 53703
Phone: 608.310.5500
Fax: 414.277.0100

Direct Line: 608.310.5502

August 14, 2013

VIA CERTIFIED MAIL &
REGULAR U.S. MAIL

Rainbow Clover, LLC
117 W. Main Street
Madison, WI 53703

VIA CERTIFIED MAIL &
REGULAR U.S. MAIL

Glenn K. Jahns
117 W. Main Street
Madison, WI 53703

Re: Demand for Turnover

Dear Mr. Jahns:

Enclosed please find a copy of the Order Appointing Receiver entered on August 30, 2010 by Court Commissioner Thomas R. Glowacki, pursuant to the Judgment docketed in Dane County Case No. 10 CV 2175 (the "Judgment"). You have stopped making payments to your judgment creditor, JJ O'Connell Family Limited Partnership (the "Creditor") and it has come to the attention of the Creditor that you are looking to the assets of Rainbow Clover, LLC (the "Assets").

The Order Appointing Receiver prohibits you selling the Assets. Further, it allows me, as the appointed Receiver, to sell all Assets and apply the proceeds from the sale to be applied to the amount owed pursuant to the Judgment. The Assets include but are not limited to all personal property, such as equipment, furnishings and inventory. In addition, the Assets include all cash and contract rights such as accounts receivables and leases.

I am hereby demanding that you turnover all Assets to me by Tuesday, August 20, 2013, at 9:00 a.m. To turnover the Assets to me, please provide me keys to the leased premises located at 117 W. Main Street, Madison, Wisconsin (the "Premises") at my office by Tuesday, August 20, 2013, at 9:00 a.m. My address is stated at the top this letter. Please leave all Assets at the Premises and bring the keys to my office.

Rainbow Clover LLC
Mr. Glenn K. Jahns
August 14, 2013
Page | 2

If you do not comply with this turnover demand by such date, I will assume you will not be doing so and I will take all action to achieve turnover of the Assets without your cooperation.

I urge you to act on this immediately. Thank you for your anticipated cooperation.

Cordially,



Rebecca R. DeMarb
rdemarb@kerkmandunn.com

RRD:cjm

345

Enclosure

cc: Mr. Glenn K. Jahns

533 W Main Street #210, Madison, WI 53703 (via certified & regular mail)

Shamrock Bar and Grill, Inc., Attn: Robert D. Mahr,

117 W. Main St., Madison, WI 53703 (via certified & regular mail)

Shamrock Bar

117 W. Main Street, Madison, WI 53703 (via certified & regular mail)

Attorney Craig Stevenson (via email only)

KERKMAN DUNN SWEET DeMARB

A Partnership of Limited Liability Corporations

Suite 525
121 S. Pinckney St.
Madison, WI 53703
Phone: 608.310.5500
Fax: 414.277.0100
Direct Line: 608.310.5502

August 28, 2013

VIA HAND DELIVERY

Mr. Larry E. Lichte
Empire Realty Company
123 West Main Street
Madison, WI 53703

Dear Larry:

This letter repeats the information contained in the email message I sent to you last night.

As Dale Peterson has probably communicated to you, I was in contact with him regarding the lease for the Shamrock Bar. Yesterday, he informed me that he is not representing you on this matter. Craig Stevenson is representing the judgment creditor. I am the receiver appointed because of the judgment in Dane County Case No. 10 CV 2175. I believe you have a copy of the Order Appointing Receiver. However, I am enclosing another copy for your reference.

As receiver, I am charged with preserving assets of the debtor, Rainbow Clover, LLC, to liquidate them and apply the proceeds to the judgment held by the judgment creditor, JJ O'Connell Family Limited Partnership.

I understand that you entered into a lease with Rainbow Clover, LLC, for the premises from which the Shamrock Bar operated. That lease is an asset of Rainbow Clover, LLC, and, therefore, I am authorized to recover its value. Please send me a copy of the lease and any notices that you provided to Rainbow Clover, LLC, regarding a default on the lease or a termination of the lease. Please send me this information by Friday of this week. I would prefer to receive the information and documentation by Friday.

I intend to cure whatever defaults exist on the lease to preserve its value for the benefit of the judgment creditor. Although I have requested complete turnover

Mr. Larry E. Lichte
Page 2
August 28, 2013

from Rainbow Clover, LLC, it has not complied and I do not have a copy of the lease. I cannot cure the default without the lease.

If you are being represented, please forward this letter to your attorney and ask him or her to contact me. Thank you.

Cordially,

A handwritten signature in black ink, appearing to read "Rebecca R. DeMarb", with a long horizontal flourish extending to the right.

Rebecca R. DeMarb

rdemarb@kerkmandunn.com

RRD:cjm

345

Empire Realty It

Enc.

cc: Attorney Craig Stevenson (via e-mail)

 COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 4

DANE COUNTY

JJ O'Connell Family Limited Partnership
c/o Attorney Richard Wm. King
1667 Capital Ave., Suite A
Madison, WI 53705

PLAINTIFF

Case No. 10CV2175
Money Judgment: 30301

-vs-

Rainbow Clover, LLC
ATTN: Glenn K. Jahns
117 W. Main Street
Madison, WI 53703

And

Glenn K. Jahns
117 W. Main Street
Madison, WI 53703

DEFENDANTS

ORDER APPOINTING RECEIVER

Upon Plaintiff JJ O'Connell Family Limited Partnership's motion to appoint a receiver pursuant to Chapter 816 of the Wisconsin Statutes of the property of Defendants, Rainbow Clover, LLC and Glenn K. Jahns ("Defendants") herein; and

Defendants having been ordered to appear at a supplemental examination before Dane County Court Commissioner Thomas R. Glowacki on August 20, 2010, and it appearing from the evidence and testimony at said hearing that Defendants have property which is not exempt under Wisconsin law, and it appearing that no other receivership arising out of a supplemental

proceeding is pending against Defendants:

IT IS HEREBY ORDERED:

1. That Rebecca R. DeMarb be and is appointed supplementary receiver under Chapter 816 of the Wisconsin Statutes of all the property, equitable interest, claims, assets, effects, rights and things in action of Defendants, including, but not limited to, all assets of Rainbow Clover, LLC, sufficient to satisfy the judgment together with post-judgment costs, interest, and receiver's fees with the usual powers of receivers in such cases and that the receiver shall not be required to furnish any bond until tangible assets come into her direct possession. The receiver, in her discretion, may continue the operation of any active business conducted by the defendant or any LLC controlled by the defendant, including, but not limited to The Shamrock Bar, 117 W. Main Street, Madison, Wisconsin. The receiver, and only the receiver, may vote the membership units of Rainbow Clover, LLC and any other entity controlled by the defendant. The receiver may sell said property, by public or private proceedings, in any commercially reasonable manner and without further order of the Court.

2. That said Defendants assign, convey and deliver over to such Receiver, on oath, under the direction of said Court Commissioner, all of said defendant's property not exempt by law from execution, equitable interests, things in action and effects, and all notes, bonds, mortgages, deeds, books and accounts, contracts, papers, evidences and securities relating to the same, and that he appear before said Court Commissioner from time to time, and produce such books and papers and submit to such examination on oath as he may direct, in relation to any matter which he may be legally required to disclose.

3. Defendants are hereby enjoined and restrained from making any transfer or other disposition of any and all property belonging to him not exempt from execution by law and from

interfering in any way with the receiver or the rights of the receiver in connection with said property.

4. The receiver shall be compensated at the rate of \$240.00 per hour for attorneys and \$110.00 per hour for paralegals, to be increased on January 1, 2011, plus regular costs and expenses necessary for the work, to be paid on a monthly basis by judgment creditor.

5. This order is subject to acceptance by Rebecca R. DeMarb, which she will do by letter to Thomas Glowacki once a managing entity is found for The Shamrock Bar. Rebecca R. DeMarb will advise Thomas Glowacki by letter if she chooses not to accept the appointment.

6. The Court retains jurisdiction to enter such further orders as may be necessary or appropriate related to this receivership.

Dated this 30 day of August, 2010.



Thomas R. Glowacki
Court Commissioner
Dane County, Wisconsin