

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 08/10/2023

TIME: 10:18:00 AM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Herlinda Chavarin, Yvette Mapula

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2018-00034229-CU-BC-CTL** CASE INIT.DATE: 07/10/2018

CASE TITLE: **Razuki vs Malan [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

APPEARANCES

The Court, having taken the above-entitled matter under submission on 07/28/2023 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

For over a year, the court has heard from the parties and considered extensive briefing on issues pertaining to disbursement of the remaining funds held in trust by the receiver. The court finds that it has the present authority to disburse funds and that the funds should be disbursed to CDBCA, Inc. and the California Department of Tax and Fee Administration ("CDTFA").

"Upon completion of the receivership, the court may discharge the receiver and his or her sureties upon the approval of the receiver's account. The order of discharge also approves payment of any remaining claims to the receivership estate, the payment of any remaining expenses of administration, and compensation of the receiver." (12 Miller & Starr, Cal. Real Estate (4th ed. 2022) § 41.21 [citing CRC 3.1184; *Aviation Brake Systems, Ltd. v. Voorhis* (1982) 133 Cal.App.3d 230, 232].) On December 12, 2022, the court ordered the Receiver discharged but directed the Receiver to "hold the \$675,000 in trust until further order from the Court." (ROA 2345.) The court retained jurisdiction to act on the remaining funds. (See, e.g., 3 Clark on Receivers (3rd Ed. 1992) § 691 ["The termination of the receiver's official relation to the court does not of itself take the property out of the custody of the court. When the official relation of the receiver to the court is terminated, the court may act itself concerning the property, or may appoint a new receiver to act for it concerning the property."]) The time for disbursement is now. There remains no reason to hold the funds until after trial as the right to the funds does not depend on the underlying merits of the lawsuit or any claims that allegedly exist against CBDCA or any other party.

Additionally, the court finds that CBDCA is entitled to the funds based on its Receivership Certificate less the amount owed to the CDTFA.

"Courts . . . have substantial discretion to authorize a receiver to borrow money to fund the preservation and management of property in the receivership estate, particularly where, as here, the estate does not produce income. In that circumstance, the receiver may ask the court to authorize the issuance of a receiver's certificate to the lender as security for money loaned to the estate. *Typically, such a*

receivership certificate will have priority over all other liens-even preexisting liens."

(*City of Sierra Madre v. SunTrust Mortgage, Inc.* (2019) 32 Cal.App.5th 648, 657 [emphasis added].) These receivership certificates are entitled to "super-priority." (*County of Sonoma v. Quail* (2020) 56 Cal.App.5th 657, 673.)

The Receiver's Final Report stated:

"After the taxes are paid, I will have approximately \$473,115.11 in the receivership account. In general, I am supportive of CBDCA's position that as the receivership lender it has a priority claim to the funds."

(ROA 2243, Declaration of Receiver Michael Essary, ¶ 9.) The court agrees. CBDCA provided \$1,000,000 in funding to the Receiver in two installments on May 9 and May 28, 2019 respectively to avoid certain losses in real estate and business. That loan was secured by a Receiver's Certificate and additionally secured by a Deed of Trust. (ROA 2265, Ex. 2 [Receiver's Certificate of Indebtedness No. 1]; *id.*, Ex. 3 [Deed of Trust].) The Receiver's Certificate entitles CBDCA to priority which supersedes all other liens, including any lien based on attorney's fees and costs. The court's May 4, 2021 order authorizing the sale of the Balboa Ave Properties free and clear of liens did not disturb CBDCA's lien. Rather, the court specifically ordered that "[t]he CBDCA, Inc. lien will be stripped from the Balboa Ave Properties and *attached to the net sale proceeds.*" (ROA 1687, ¶ 4 [emphasis added].) Claims that the Receiver's Certificate evaporated upon sale of the Balboa Ave Properties are without merit and contrary to the explicit language of the court's order.

Accordingly, the fees are ordered disbursed to CDBCA less the taxes owed to CDTFA. To hold otherwise would undermine the purpose of the Receivership and the court's equitable authority in approving CBDCA's loan to the Receiver.

CBDCA is directed to prepare and submit a formal order to the court within 20 days.

IT IS SO ORDERED:

Eddie C. Sturgeon

Judge Eddie C Sturgeon