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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-010943 02/21/2017

HONORABLE KAREN A. MULLINS

CLERK OF THE COURT
S. Brown
Deputy

I M H SPECIAL ASSET N T 168 L L C, et al.

v.

APERION COMMUNITIES L L L P, et al.

CHRISTOPHER H BAYLEY

APERION COMMUNITIES L L L P
C/O RECORP CAPITAL GROUP
7835 E REDFIELD #102
SCOTTSDALE AZ 85260

M C A FINANCIAL GROUP LTD
C/O KEITH BIERMAN
4909 N 44TH ST
PHOENIX AZ 85018
KEVIN T AHERN
T D AMERITRADE INC
PO BOX 2155
OMAHA NE 68103-2155
CHARLES SCHWAB AND CO INC
211 MAIN ST
SAN FRANCISCO CA 94105
CHASE BANK
JPMORGAN CHASE BANK N A
COURT ORDERS & LEVIES DEPT
P O BOX 183164
COLUMBUS OH 43218-3164
CHARLES SCHWAB BANK
211 MAIN ST
SAN FRANCISCO CA 94105
MIDFIRST BANK
ATTN: EXCEPTION PROCESSING
11001 N ROCKWELL
OKLAHOMA CITY OK 73162

U S BANK
PD-OR-C2GN
P O BOX 30869
PORTLAND OR 97294
WELLS FARGO BANK N A
LEVY PROCESSING MAC S3928-021
P O BOX 29779
PHOENIX AZ 85038-9779
E TRADE BROKERAGE SERVICES INC
34 EXCHANGE PL
JERSEY CITY NJ 07311
DAVID J CANTELME
FLAGSTAFF RANCH DEVELOPMENT
L L C
ATTN: ROBERT M SEMPLE
2700 N CENTRAL AVE 9TH FL
PHOENIX AZ 85004
MARK FAUCHER
20410 N 55TH AVE
GLENDALE AZ 85308
DON C FLETCHER
MICHAEL L GERTELL
FLAGSTAFF RANCH GOLF CLUB
ATTN: KIRK PALMER
3850 S LARIAT LOOP
FLAGSTAFF AZ 85005
KURT E HAMMOND
ANDREW HARDENBROOK
BRIAN HOLOHAN
ROMAN HRYB
27250 N 64TH ST
UNIT 15
SCOTTSDALE AZ 85266
THOMAS D LAUE
ZORA MANJENCICH
ROBERT J MILLER
ALLIANCE BANK N A
2901 N CENTRAL AVE STE 100
PHOENIX AZ 85013
NATIONAL BANK OF ARIZONA

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LEGAL SUPPORT
1875 SOUTH REDWOOD RD
SALT LAKE CITY UT 84104
DAVID M REAVES
JENNIFER A REITER
NATHANIEL ROSE
R M S FAMILY L L C
2700 N CENTRAL AVE # 100
9TH FL
PHOENIX AZ 85004
JOEL E SANNES
DAVID A SERENO
144 NORTH CHURCH ST
WAILUKU
MAUI HI 96793
MICHAEL G TAFOYA
RICHARD R THOMAS
A M TRUST BANK
ATTN: CUSTOMER
DOCUMENTATION DEPT
1601 VETERANS HWY
ISLANDIA NY 11749
RONALD E WARNICKE

MINUTE ENTRY

The Court has considered: Plaintiffs and Receiver's Emergency Joint Motion to Authorize Stockholder Receiver to Instruct Corporations to Borrow Money from Judgment Creditors to Repair Water Wells and Remediate Leakage in New Mexico[1] ("Joint Motion"); Declaration of David M. Reaves in Support of Joint Motion; Declaration of Lawrence D. Bain in Support of

[1] The Joint Motion is fully entitled "Emergency Joint Motion to Authorize Stockholder Receiver to: (1) Instruct Corporations to Borrow Money From Judgment Creditors to Repair Water Wells and Remediate Leakage in New Mexico; and (2) Wind Up Tesoro Properties, LLC, Recorp New Mexico Associates II, L.P., and Recorp New Mexico Associates III, LP, and Transfer Certain Assets to Plaintiffs in Full and Final Satisfaction of All Claims and Debts." This ruling, however, addresses only the first request to authorize Receiver to instruct certain corporations to borrow money through the proposed Loan Agreement.

Joint Motion; Declaration of Gary M. Lee in Support of Joint Motion; Declaration of Don Hulke in Support of Joint Motion; Intervenor Beck's Motion for Order that Recorp Partners, Inc. Take No Action as General Partner of Recorp New Mexico Associates Limited Partnership; Supplemental Objection of Hart Interior Designs, LLC 401(K) Profit Sharing Plan to Joint Emergency Motion[2]; Special Master's Report and Recommendations Dated January 24, 2017; First Supplement to Special Master's Report and Recommendations Dated January 27, 2017; the evidence admitted at the February 6, 2017 evidentiary hearing on the Joint Motion; and the submitted written closing arguments of counsel.

Procedural Background

In December 2012, a Judgment was entered in favor of Plaintiffs IMH Special Asset NT 161, LLC and IMH Special Asset 168, LLC (collectively the "Judgment Creditors") and against David Maniatis and DPM-TT Trust in the amount of $8,663,961 plus interest at the rate of 24% as of January 5, 2010. The Judgment Creditors estimate that the Judgment approximates $30.2 million at this time, although the Court has not confirmed this calculation. In February 2013, during post-judgment collection efforts, Maniatis[3] entered into a Stipulation with the Judgment Creditors whereby he was required to identify all partnerships in which he held a partnership interest and all corporations in which he held stock. *See Stipulation to Quash Temporary Restraining Order and Lifting Order Freezing Schwab Accounts, filed February 21, 2013, ¶¶2, 3;Order Approving Stipulation et al filed February 21, 2013.* In the Stipulation, Maniatis and the Judgment Creditors also agreed that Maniatis's shares of stock in the identified corporations would be transferred to a corporation to be newly formed and wholly owned by the Judgment Creditors for this very purpose, and that a receiver would be appointed over that newly formed corporation. *Id., ¶3*. This Stipulation led to the issuance of several Orders, including an Order transferring Maniatis's shares of stock in the identified corporations to newly formed Stockholder, LLC ("Stockholder"), and an Order placing Stockholder in a Receivership and appointing David Reaves as the Receiver. *Order Transferring Judgment Debtors' Shares of Stock to Judgment Creditors' Nominee, filed June 12, 2013; Order Appointing a Receiver Over Stockholder, LLC, filed June 12, 2013*.[4]

Recorp Investments, Inc. and Recorp Partners, Inc., relevant to the Joint Motion, were previously owned by Maniatis and are now wholly owned by Stockholder. *See Order Transferring Judgment Debtors' Shares of Stock to Judgment Creditors' Nominee, filed June*

[2] Other objections were raised by The Hart Entities in various filings objecting to the emergency setting of the hearing, which the Court previously also considered.
[3] Aperior Communities, LLLP and Eladio Properties, LLLP also entered into this stipulation together with Maniatis, but for simplicity, are referred to herein collectively as "Maniatis."
[4] Other Orders include *Charging Order Against Membership Interests* and *Charging Order of Judgment Debtors' Partnership Interests*, filed April 16, 2013.

12, 2013, and *Declaration of David M. Reaves in Support of Emergency Joint Motion, ¶6 and fnt. 1*. Recorp Investments, Inc. is the general partner of Carinos Properties, LLC ("Carinos") and Recorp Partners, Inc. is the general partner of Recorp-New Mexico Associates Limited Partnership ("RNMA"). *Declaration of David M. Reaves in Support of Emergency Joint Motion, ¶¶7, 9.* Donald Hulke is the President of Recorp Investments, Inc. and Recorp Partners, Inc. *Id., ¶¶8, 10*. As President, Mr. Hulke is responsible for the day to day operations of Carinos and RNMA. *Declaration of Donald Hulke in Support of Emergency Joint Motion, ¶¶5-8*. Although not directly stated in the Joint Motion, it appears that Stockholder owns 36.36% of Carinos and 12.22% of RNMA. *Declaration of Lawrence D. Bain in Support of Emergency Joint Motion, ¶7*. The remaining interests are owned by persons/entities other than Stockholder.

The Joint Motion requests that this Court authorize the Receiver to instruct Mr. Hulke, as President of Recorp Investments, Inc. and Recorp Partners, Inc., which in turn are the general partners of Carinos and RNMA, to execute the proposed Loan Agreement. Thus, the terms of the Receivership Order are of critical in considering this request. The Receivership Order grants the Receiver the power to "exercise all of the rights and privileges associated with the ownership of the shares of stock transferred to Stockholder, which thus constitutes the Receivership Property. *Order Appointing a Receiver Over Stockholder, LLC, ¶5.* The Receivership Order also provides:

> The Receiver is granted all of the rights and powers available to general receivers at common law and in equity in Arizona, including, but not limited to the following powers, duties and authorities:
> (a) *Possession*. To … exercise all of the rights of an owner of such Property;
> (b) *General Operation and Management*. To manage, maintain, and preserve the Property for the duration of this receivership in a reasonable, prudent, diligent and efficient manner to maximize its value for the benefit of the Judgment Creditors. The Receiver may enter into contracts with third parties to … maintain, and preserve the Property in the best interest of the Receivership Estate (which means the totality of the Property, accounts, assets, rights, and obligations the Receiver has authority to manage and control in accordance with this Order) (the "Receivership Estate"). The Receiver may, in his business judgment, operate, manage, control, and conduct in the ordinary and usual course of business, and do all things and incur the risks and obligations ordinarily incurred to owners, managers, and operators of similar businesses…
> …
> (r) *General Powers*. To do any acts which the Receiver, in his sole discretion and business judgment, deems appropriate or desirable to protect the value of the

> Receivership Estate. To use such measures, legal or equitable, as the Receiver deems desirable, necessary or appropriate in his business judgment to protect and preserve the value of the Receivership Estate; and to generally do such other things as may be necessary or incidental to the foregoing specific powers, directions and general authorities and to take actions relating to the Receivership estate beyond the scope contemplated by the provisions set forth above, provided the Receiver first obtains the approval from this Court for any actions beyond the scope contemplated herein.

Id., ¶6(a), (b), (r). The above provisions make it clear that (1) the Receiver has the power to manage and exercise ownership rights, (2) one of the Receiver's primary functions is to protect and preserve the value of the Receivership Estate, and (3) court approval is required for actions beyond those contemplated by the Receivership Order.

The Loan Agreement

In the Joint Motion, Plaintiffs and the Receiver request that this Court authorize the Receiver to instruct Mr. Hulke to execute the proposed Loan Agreement between MRH Lending, LLC ("MRH"), as lender, and Carinos and RNMA, as borrowers. The parties do not dispute that MRH is wholly owned by IMH Financial Corporation, and that IMH Financial Corporation also wholly owns the Judgment Creditors. Under the Loan Agreement, MRH would lend $1,433,333 to Carinos and RNMA for the purpose of repairing two wells located on real property owned by Carinos and remediating unauthorized discharges from one of those wells. *Joint Motion, Exh. 1, Section 2.1(b), (c).* The loan would be collateralized by, *inter alia*, (1) 1,254 acres of real property owned by Carinos, on which the two wells sit, (2) 3,058 acres of real property owned by RNMA, (3) all of the personal property owned by Carinos and RNMA, and (4) the mineral and water rights for the real property owned by Carinos and RNMA. *Id., Section 8.1(a); Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing; see also Joint Motion, Exhs. 3, 4, 5, 6.* Carinos and RNMA would retain only 20% non-voting rights and forfeit all capital interests. *Id., Exh. 1, Section 2.6 and Amended and Restated Limited Liability Company Agreement of Rio West—Carinos/ RNMA I Assets, LLC, Schedule A.* If Carinos and RNMA fail to buy-out the entirety of the loan proceeds ($1,433,333) within 30 days after the Loan Agreement closes, that failure constitutes an event of default and MRH is entitled to foreclose and take possession of all the above-listed collateral. *Id., Sections 2.3(b), 9.1(e), 9.2(a)(1),(2).* The interest rate on the loan also increases from 8% to 15% upon default. *Id., Section 1.1.* The Loan Agreement is conditioned on the approval of this Court. *Id., Section 3.1(c).*

Grounds for Denial of the Joint Motion

Based upon the record before the Court, the Joint Motion is denied for the reasons stated below.

1. **The Loan Agreement is in Essence a Sale Unsupported by Any Analysis of Fair Market Value of the "Sale" Assets**

The terms of the Loan Agreement require a complete buy-out of the $1,433,333 loan proceeds within 30 days of closing to avoid a default. Thus, even though the wells are located on Carinos' property, RNMA would forfeit its real property and future water rights absent funding of the full $1,433,333. In other words, Carinos and RNMA sink or swim together. No other person/entity having an ownership interest in either Carinos or RNMA has stepped forward with any alternative financing for the well repairs or remediation, even though they were mailed a copy of IMH's Joint Motion on or about November 11, 2017. *See Supplemental Certificate of Service Re: Joint Emergency Motion Date November 16, 2016, and Related Supporting Documents*. Moreover, all of the witnesses at the evidentiary hearing who were asked--including the Receiver--testified that they fully expected Carinos and RNMA would not be able to buy out the loan within 30 days of closing and thus the property would be foreclosed. Indeed, the Receiver referred to this transaction as an "asset transfer" rather than a "loan."

Despite the undisputed reality of the situation, neither Plaintiffs nor the Receiver offered any analysis of the fair market value of the assets collateralizing the loan. Thus MRH would, within 30 days of closing, obtain 80% ownership of approximately 4,313 acres of real property, 2/6ths of any future water rights, and all other personal property owned by Carinos and RNMA without having first completed an analysis of the fair market value of those assets. Ordinary due diligence dictates that MRH's agreement to fund the well repair and remediation to the tune of $1,433,333 must be comparable, in some reasonable way, to the fair market value of the collateral securing that loan.

The Joint Motion and supporting Declarations provide only vague clues of the fair market value of the real property, personal property, or water rights. For example, the Receiver states that "it is extremely unlikely that anyone would wish to purchase the properties with the [w]ells in the present state of disrepair and while the [w]ells are discharging contaminated water upon the property", and that "[o]n the other hand, if the [w]ells are repaired and the water rights are subsequently perfected…, then I believe that the Rio West Owners' assets may be sold for several millions of dollars." *Declaration of David M. Reaves in Support of Joint Motion, ¶51*. He then states that "a broker engaged jointly by IMH and the Rio West Owners estimates that the value of the property without

the water interests is approximately $500 an acre….[but] with the water interests, Rio West may be sold for much more." Id., ¶*52*. He goes on: "In fact, I understand that an expression of interest was received by IMH with a total purchase price range of between $15,000,000 to $25,000,000.00 for approximately 9,000 acres of land, including all water rights/interest, contingent upon successful transfer of the water rights, clean-up of the property, and repairing the [w]ells. Without the water interests, the Rio West property value is estimated by the broker at $6,000,000 for all 12, 000 acres (at $500/acre). Thus, repairing the [w]ells and having the ability to sell the water interests increases the price per acre to between $1,250 and $2,083.33, and adds approximately between $750 and $1,583.33 per acre in value over its present value." *Id*.

Next, Mr. Hulke states that "a broker engaged jointly by IMH and the Rio West Owners estimates that the value of the property without the water interests is approximately $500/acre" but "[w]ith the water interests, Rio West may be sold for much more." *Declaration of Donald Hulke in Support of Emergency Joint Motion*,¶*52*. [5]

This same information was set forth in the Declaration of Lawrence D. Bain. *Declaration of Lawrence D. Bain in Support of the Emergency Joint Motion, ¶¶23, 32.*

Neither the name of the broker nor the "estimate" made by that broker has been shared with this Court. No appraisal has been submitted and there is no expert affidavit setting forth the fair market value of the real property or the water rights. The vague language of the above Declarations and the widely disparate figures bandied about without any record support is rather astonishing for a loan of this magnitude. Frankly, the Court has absolutely no idea what the fair market value of the real property is now or what it might be in the future, and the same is true for the water rights.[6] The record provides no opportunity to determine the fairness of securing this "loan" with the real

[5] Mr. Hulke also states that he has communicated with the approximately 100 persons/entities having an ownership interest in the six corporations that each hold a 1/6th ownership interest in the water rights "to keep them apprised of the status of [the water rights] and the continuing need for cash to protect and preserve [those corporations'] assets." *Declaration of Donald Hulke in Support of Emergency Joint Motion*,¶¶*11, 22*. He further states that 7,700 acres of land owned by Butera, Tesoro, RNMA II, and RNMA III was foreclosed upon by SW Lending over his objection, leaving Carinos and RNMA the sole owners of the remaining 4,300 acres. *Id.*, ¶¶*11-18.* This portion of his Declaration seems to implicitly recognize that there is value in the water rights.

[6] The Court is well aware that the water rights are not fully vested, however a Notice of Intention is on file, owned 1/6th by Carinos and 1/6th by RNMA, and a Memorandum of Understanding has been entered into between the present owners and Sandoval County, New Mexico, which anticipates the production of 18,000 acre feet of water per year for use in a Master Planned Development District. *Joint Motion, Exhs. 4, 5.* There was evidence at the evidentiary hearing of a recent letter of intent to purchase for $20 million, even though the President of IMH testified that the offeror backed out once he learned of the litigation surrounding the wells.

property and water rights owned by Carinos and RNMA. This fact alone precludes court authorization.[7]

2. The Terms of the Loan Agreement are Unreasonable

In addition to the fundamental issue of fair market value of the collateral, many other terms of the Loan Agreement unreasonably and unfairly favor MRH. For example:

● The 30-day period to take out the loan is extremely short and virtually ensures default.

● The buy-out requirement of the full $1,433,333 ties Carinos and RNMA, two separate entities, together for default purposes. *Joint Motion, Exh. 1, Sections 2.3(b), 9.1(e), 9.2(a)(1),(2).* Thus, Carinos and RNMA sink or swim together, even though the wells are on real property owned by Carinos.

● The ability of MRH to foreclose on all real and personal property effectively takes all of the corporate assets of Carinos and RNMA and leaves those entities with all corporate debt. In contrast, Plaintiffs MRH gain the assets unburdened by such debt. Thus the alleged 80%/20% ownership split is essentially illusory.

● MRH's performance under the Loan Agreement may, at its option, be discharged upon default by the borrowers. *Id., Section 9.1(e), 9.2(a)(3).* Thus, conceivably, MRH could wait 30 days after closing, foreclose on the collateralized property, and then walk away without having to advance any of the $1,433,333 for well repairs or remediation.

● Carinos and RNMA must fully indemnify MRH for any environment claims including after the transfer of collateral to MRH upon the borrowers' default, with a full waiver of the right to a jury trial. *Id., Environmental Indemnity Agreement Paragraphs 4, 8, 11.* Thus Carinos and RNMA will continue to be

[7] In 2015, the National Conference of Commissioners on Uniform State Laws drafted a Uniform Commercial Real Estate Receivership Act set forth a proposed uniform law for court approved receiverships. That Act permits a receiver to sell receivership property in a private sale rather than a public auction. The Commission addressed the differences in valuing property under a distress sale versus an arms-length private sale, noting that "foreclosure sales do not always bring prices that reflect the value that might be obtained in an arms-length, non-distress sale." *Uniform Commercial Real Estate Receivership Act, pp. 5-6.* The Commission further noted that "giving the receiver the power to market the property in a private sale, with the increased opportunity for due diligence investigation that a private sale might provide, reflects sound policy." *Id*. Thus the Commission recognized the importance of obtaining the best price for receivership assets. This Loan Transaction ignores this fundamental objective.

financially responsible to MRH for all environmental liabilities while MRH enjoys the benefit of owning the well and water rights assets.[8]

● Once a default occurs, new corporate charters are automatically put in place that eliminate any interest in any asset by the existing persons/entities that own the remaining interests in Carinos and RNMAI. These new charters contain many unfavorable terms. *Joint Motion, Exh. 1, Section 2.6 and Amended and Restated Limited Liability Company Agreement of Rio West—Carinos/ RNMA I Assets, LLC*

In sum, many loan terms unreasonably and unfairly favor Plaintiffs IMH over Carinos and RNMA.

3. **The Loan Agreement Deprives Non-Judgment Debtors of Assets Without Consideration of Corporate Governance**

Stockholder owns 100% of Recorp Investments, Inc., which is the general partner of Carinos, but only 36.36% of Carinos. Persons/entities that are not judgment creditors own the reaming 74% of Carinos. The Hart Entities own 56% of Carinos and object to the Joint Motion for multiple reasons, including that and has alleged that the Loan Agreement violates ERISA. Indeed, litigation is pending in Federal District Court on certain ERISA issues raised by the Hart Pension Plan.

Similar facts exist for RNMA. Stockholder owns 100% of Recorp Partners, Inc., which is the general partner of RNMA, but only 12.22% of RNMA. Intervenor Beck is a limited partner in RNMA, and he too vehemently objects to the Joint Motion. His objection is based in part on his allegation that on December 1, 2016, more than 75% of the limited partners of RNMA voted to remove Recorp Partners, Inc. as the general partner of RNMA. Therefore, the role of the Receiver as General Partner is in dispute.

Plaintiffs did not offer in evidence the corporate governance documents for Carinos or RNMA[9], nor is there a complete record before this Court on the factual issues raised by Beck. The Court is unwilling to disregard the concerns raised by Hart and Beck.

Additionally, the duties of the Receiver under the Receivership Order are of primary importance. The Receivership Order repeatedly requires the Receiver to protect

[8] These are only examples of some of the provisions of the proposed Loan Agreement, most of which were not addressed at the evidentiary hearing.
[9] At best, in correspondence soliciting capital, there are references to isolated corporate governance documents and New Mexico partnership law. *See Joint Motion, Exhs. 9, 10.*

and preserve the value of the Receivership Estate. *Id., e.g.* ¶¶*2, 6(b),(r)*. The Receiver is granted the power to "in his business judgment, operate, manage, control, and conduct in the ordinary and usual course of business, and do all things and incur the risks and obligations ordinarily incurred by owners, manager, and operators of similar businesses". *Order Appointing a Receiver Over Stockholder, LLC,* ¶*6(b)*. The Receivership Order, however, is silent as to how to address ownership interests separate and apart from the judgment debtors, such as those held by Hart, Beck, and the other owners of Carinos and RNMA. Here, a majority interest of both Carinos and RNMA are owned by third-parties, not by Stockholder. Yet the Loan Agreement allows MRH to foreclose on all of the assets of these corporations without regard to the fair market value of those assets in relation to the loan proceeds and without offering any of the owners the right to vote on the transaction. Moreover, the Receiver has not made any effort to sell the assets of the corporation for a fair market value, choosing instead to present a distress-priced asset transfer under the guise of a "loan".

These unresolved legal and factual issues concerning the third-party ownership interests are additional reasons for denying the Joint Motion.

4. **Execution of the Loan Agreement is Not a Proper Course of Action under the Receivership Order**

As previously stated, one of the Receiver's primary functions is to protect and preserve the value of the Receivership Estate, and to manage the Receivership Estate in a prudent manner to maximize it value for the benefit of the Judgment Creditors. To meet these goals, an extensive analysis of the financial impact of the Loan Agreement in relation to the outstanding Judgment is required. Yet Plaintiffs have not demonstrated that the proposed Loan Agreement maximizes the value of the receivership property, or that the proposed Loan Agreement preserves receivership property. Without that demonstration, the Court cannot grant the Joint Motion.

5. **The Role of the Repair and Remediation of the Wells**

The proposed Loan Agreement is purportedly intended to fund the repair/remediation of the two wells on the Carinos property. Plaintiffs have presented detailed evidence of the urgency of the well repair/remediation mandated by the State of New Mexico. Specifically, the repair and remediation is required by and subject to the approval of the New Mexico Department of Environmental Quality and the New Mexico Office of the State Engineer ("New Mexico Agencies"). *Special Master's Report and Recommendations Dated January 24, 2017, Exh. 3.* The Special Master's Report sets forth the decision tree adopted by the New Mexico Agencies to repair and

remediate. *Id*. Depending upon the extent of damage to the wells, the Special Master has estimated the cost between $1,750,000 and $2,400,000. *Id., ¶26.* While the New Mexico Agencies have not stated what they will require as financial assurance, they do require that a full array of manpower, equipment, and materials be fully mobilized on-site to immediately address any discharge or other catastrophic threat that might materialize during repair operations. *Id., ¶4.* Unquestionably an exigency exists regarding the wells.[10]

In the Joint Motion itself, Plaintiffs have relied primarily on the fact that the owners of Carinos and RNMA have not stepped forward with any alternate financing options, and that these same owners have failed to respond to capital calls made earlier in time, requiring IMH to advance funds for the preparation of tax returns and other business operations, including a prior well repairs. Plaintiffs' also state that their own efforts to find alternative funding have been unsuccessful,[11] and that no other funding exists for the well repair/remediation. Even assuming that all of the foregoing is true, as it appears to be however, the issue is not whether there are other means to fund the well repair/remediation or whether the terms of the Loan Agreement is fair to MRH given the attendant risks. Rather the issue before the Court is whether it should authorize the Receiver to instruct Mr. Hulke to execute the proposed Loan Agreement.

The terms of the Loan Agreement reflect Plaintiffs IMH's understandable reluctance to loan money under these circumstances, and the one-sided nature of the loan terms further reflect that reluctance. However the Court must look at the transaction from the standpoint of whether execution of the Loan Agreement protects and preserves the value of the Receivership Estate. For these reasons, the exigency of the well repair and remediation cannot constitute an overriding reason for this Court to authorize execution of the Loan Agreement.

6. **Plaintiffs IMH Have Conditioned their Willingness to Enter Into the Loan Transaction on this Court's Approval of Their Second Unrelated Request**

Plaintiffs IMH stated in its written closing argument:

> Authorizing the Stockholder Receiver to order Mr. Hulke to execute the loan documents is just the first step. **IMH will not deploy any capital** unless and until the Court approves the second half of the Joint Emergency Motion

[10] See also the Declaration of Lawrence Bain.

[11] *See Declaration of Donald Hulke in Support of Emergency Joint Motion, ¶31*. Yet at the evidentiary hearing, it became apparent that Plaintiffs IMH's efforts to find alternative funding from sources other than through the owners did not occur until after the Joint Motion was filed.

> winding up Tesoro, RNMA II, and RNMA III and transferring their water rights to IMH in exchange for IMH's funding of their portion of the repairs. [Emphasis in original]

Movants' Closing Argument Re: February 6-7, 2017 Evidentiary Hearing on Joint Emergency Motion, p.2, fnt. 2. The Court is uncertain what is meant by the phrase "deploy any capital". Does this mean that Plaintiffs will not fund the loan, in which case the use of the word "capital" appears incorrect, or did Plaintiffs mean that they would no longer advance capital for on-going necessary business expenses of Tesoro, RNMA II, or RNMA III? Regardless of which meaning was intended, the wind-up request raises issues separate and apart from the Loan Agreement request considered here. In their Joint Motion, Plaintiffs describe the wind-up request:

> Second, the Stockholder Receiver respectfully requests an order of this Court authorizing it to essentially liquidate Tesoro Properties, LLC [], Recorp New Mexico Associates II, Limited Partnership [], and Recorp New Mexico Associates II, Limited Partnership [] and transfer their assets to IMH (or its nominee) in complete and final satisfaction of any and all debts attributable to Tesoro, RNMA II, and RNMA III.

Joint Motion, 3:11-16. Plaintiffs base their request for a wind-up on the grounds that these corporations own no property other than their respective interest in the water rights and cannot pay for "their share" of the necessary well repairs. *Id., 3:24-27*. Plaintiffs then state, without adequate factual support, that the value of the water rights will not exceed the debts owing to their creditors. *Id., 3:28-4-7*. The Court could not locate any provision in the proposed Loan Agreement that makes it contingent on Court approval of the wind-up request.

From the start, the Court intentionally segregated the proposed Loan Agreement from the wind-up request and put it on an expedited tract because (1) the legal and factual issues involving the wind-up of the three other corporate entities are separate and distinct from the legal and factual issues involving the proposed Loan Agreement, and (2) Plaintiffs expressed an exigency regarding the need to secure funding for the well repair/remediation. Significant judicial resources were expending in considering the voluminous record and in considering evidence presented at the evidentiary hearing concerning the Loan Agreement. Had the Court known Plaintiffs had no intention of following through with the Loan Agreement without approval of its wind-up request, the matter would have proceeded in a very different fashion.

Nonetheless, because the legal and factual issues involving the wind-up request are separated and distinct from those related to the Loan Agreement, Plaintiffs' statement that it will not deploy capital absent approval of the wind-up request is an additional reason for denying the Joint Motion.

For all of the foregoing reasons,

IT IS ORDERED denying the Plaintiffs and Receiver's Emergency Joint Motion to Authorize Stockholder Receiver to Instruct Corporations to Borrow Money from Judgment Creditors to Repair Water Wells and Remediate Leakage in New Mexico.[12]

[12] As previously stated, this ruling only addresses the first request for authorization relating to the water wells.