WSBA CLE Presenter Guidelines

Example Coursebook Page: Original Materials

1. Introduction

State court receiverships are becoming an increasingly popular alternative to bankruptcy in Washington State. Receiverships generally cost less and are largely administered by the parties, their attorneys, and an experienced receiver; rather than by the Bankruptcy Court and a Bankruptcy Trustee. This gives the parties greater control over the case and often times costs less.

2. What is a Receiver

A 'receiver' is a disinterested person or business organization, appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims. *See Black's Law Dictionary at 1296 (8th Edition 2004)*. When discussing receiverships with non-attorneys, I often describe a 'receiver' as an interim manager appointed over a company that is in some sort of distress, in order to attempt to relieve the distress, or maintain or increase the value of the company pending its eventual sale.

3. Types of Receiverships

There are three main types of receivership appointments:

1. A receiver appointed by a government regulator pursuant to a specific statute;
2. A privately-appointed receiver; and
3. A court-appointed receiver.

Court-appointed receivers may be appointed in state or federal courts, and each jurisdiction may have its own rules relating to a receiver's appointment. While court-appointed receivers generally derive their power from the common law, there are both federal and state statutes that may address the powers and duties of a receiver in a given scenario.

A discussion of federal receiverships and receiverships brought under other states' laws is outside of the scope of these materials. Here, we will focus solely on receiverships brought under the Washington State Receivership Act (the "WSRA"), Revised Code of Washington ("RCW") 7.60 *et al*.

Note: A receiver may be appointed over an entity or an individual, however, there are no discharge provisions in the WSRA so there may be limited benefit to appointing a receiver over an individual.

Practice Pointer: While the appointment of a Receiver is an equitable remedy, not every action brought within a receivership will be considered to be an action based in equity rather than an action based in law. This is an important distinction in the context of jury trials; an action based in law is generally entitled to be heard by a jury while an action based in equity is generally not. See

e.g. Brown v. Safeway Stores, Inc., 94 Wn.2d 359, 365 (1980) *(In a civil action, a right to a jury trial exists where the relief requested is purely legal in nature, but where the relief requested is purely equitable in nature, there is no right to a trial by jury). This is important to keep in mind when dealing with adjunct litigation within a receivership, a situation discussed later in these materials.*

4. A Brief History of the Washington State Receivership Act

The appointment of a Receiver is one of the oldest equitable remedies available in the courts. Washington's prior receivership act was enacted by its Territorial Legislature more than 160 years ago. The prior act only consisted of five sections and provided little guidance to practitioners or to the courts. In fact, much of the case law that was cited under the prior act was from the 1800s and was difficult to interpret to say the least.

Example Coursebook Page: Case Summaries

Anderson v. DSHS

196 Wn. App. 674 (Division Two, November 2016)

The Public Records Act, RCW 42.56, provides that records kept by state agencies are subject to disclosure unless specifically exempted by the PRA or by any "other statute which exempts or prohibits disclosure of specific information or records".

The child support statute, RCW 26.23.120(1), provides that child support records are privateand confidential and shall only be subject to public disclosure as provided in the statute. The court concluded that the "other statute" exemption in the Public Records Act is met by the language of RCW 26.23.

Kevin Anderson had requested copies of his own child support records, including particularly the case comment history and the correspondence between the child support enforcement officer and the prosecutor's office. The court found that the case comment logs were not subject to disclosure and that correspondence between the Division of Child Support employee and the prosecutor's office was an attorney-client communication exempt from disclosure.

In the Matter of the Paternity of M.H.

187 Wn.2d.1 (November 2016)

Stephanie Bell sought to enforce an Indiana child support order for a child who is now age

32. The relevant statutes are the Uniform Interstate Family Support Act (UIFSA), RCW 26.21A.515, and the Non-Claim Statute, RCW 4.56.210(2).

The father accumulated an arrearage totaling $110,709 as of February, 2011. The parties entered into a settlement agreement that called for payments of $2,000 per month until the sum of

$120,000 had been paid. The father failed to abide by the terms of the settlement agreement. When the mother sought wage withholding in King County, the Superior Court issued the wage withholding order, the Court of Appeals reversed, and the Supreme Court reversed the Court of Appeals.