

Andrew J. Bolnick

Receiver - Trustee
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November 28, 2000

ORIGINAL

Blanca Bayo
Division of Records & Reporting
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

971185 - WS

Re: Ocwen Federal Bank, FSB v. River Ranch American Resort, Inc.
Case No. 05-1999-57677-XXXX-XX-C

Closed

Dear Ms. Bayo:

On November 16, 2000, Alice Crosby of the Public Service Commission requested that I provide you with official notification regarding receivership in the above-entitled matter. On February 28, 2000, I was appointed receiver by the Brevard County Circuit Court. A copy of the Order Appointing Receiver is enclosed for your convenience. I can be reached at (727) 791-4454, 2555 Enterprise Road, #12-A, Clearwater, FL 34623.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Andrew J. Bolnick

Enclosure

APP
CAF
CMP
COM
CTR
ECR
LEG *Crosby*
OPC
PAI
RGO *Redemann*
SEC
SER
OTH *Hong*

Done 12/13/00

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FPSC-RECORDS/REPORTING

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA
CIVIL DIVISION

OCWEN FEDERAL BANK, FSB,

Plaintiff,

Case No. 05-1999-57677-XXXX-XX-C

vs.

RIVER RANCH AMERICAN RESORTS, INC.,
et al.,

Defendants.

ORDER APPOINTING RECEIVER

THIS CAUSE came on for a hearing on February 28, 2000 upon the Verified Motion for Appointment of Receiver, as amended and supplemented (the "Motion") filed by Ocwen Federal Bank, FSB (the "Bank"). The Court having reviewed the Motion and Verified Complaint, having considered the evidence, and having heard statements, admissions and argument of counsel or the parties, finds that the Motion is well-taken and should be granted. Accordingly, it is,

ORDERED and ADJUDGED as follows:

1. The Bank has filed a Verified Complaint in this case seeking, in part, to foreclose substantially all the property and assets of River Ranch American Resorts, Inc. (the "Borrower"). The Borrower owns or has possession of property described in **Exhibit A** and **Exhibit B** (pages 1-11) and **Exhibit D** of the Notice of Lis Pendens (collectively, the "Collateral"). The Collateral includes among other property, the rents and leases, revenues, accounts receivable, income, profits, general intangibles, agreements and the proceeds thereof, including but not limited to the right to receive payment of any monies and sums due to the Borrower from the rental, lease,

occupancy, use, sale, operation, management, or license of services; food; goods; equipment; residential dwelling units, condominiums or lots; motel, lodge or hotel rooms; the marina and boat slips; stores; restaurants; the airport; golf courses and pro shop; convention centers; and meeting rooms located on or adjacent to the real property portion of the Collateral (collectively, the "Proceeds"). The Collateral is operated by the Borrower under the trade name River Ranch Resort.

2. The portion of the Motion seeking appointment of a receiver is hereby, GRANTED, pursuant to Rule 1.610, Florida Rules of Civil Procedure, the Loan Documents and Florida law. The Joint Stipulation Authorizing Order Appointing Receiver and Entry of Foreclosure Judgment is amended to reflect the consent in open court of counsel thereto the entry of this Order.

3. Andrew J. Bolnick, who is qualified and independent, shall be and is hereby appointed receiver (the "Receiver") of the Collateral for the purpose of accounting for, protecting, preserving, maintaining, operating and managing the Collateral and all agreements, contracts, leases, and other necessary aspects and matters concerning the Collateral as authorized below in paragraph 6 (the "Powers"), and for such other purposes consented to in writing by the Bank or subsequently expressly authorized by the Court (the "Additional Powers").

4. The Receiver shall promptly file an Oath of Receiver with this Court whereby the Receiver shall undertake to fully and faithfully perform his duties as Receiver.

5. The Receiver shall obtain a cash bond or surety bond in the amount of \$300,000.00 to be provided by a corporate surety in the customary form guaranteeing performance by the Receiver of the duties and obligations of the office of his receivership as described in this Order. To the extent sufficient Proceeds are unavailable, the Bank may pay for

or reimburse the Receiver for the cost of the bond and said advance by the Bank shall be deemed an administrative expense subject to priority repayment to the Bank from the operations of the Collateral as soon as Proceeds are available to satisfy the advance, and the Bank requests repayment, or if no Proceeds are available, then repaid pursuant to paragraph 11 of this Order. Such an advance also shall be secured by a first lien on the Collateral and shall be treated as if funded pursuant to Receiver's Certificates. Moreover, the bond shall provide coverage to the Bank and to the Borrower and other parties as their respective interests may appear for losses due to wrongful acts or omissions of the Receiver, his agents, servants, employees, and representatives. The bond shall be submitted to the Clerk of this Court for approval within seven (7) business days from the entry of this Order. In the event the bond is not posted within the time period set forth above and the time for posting has not been extended by the Court, the appointment of receiver herein shall become null and void and the Court shall enter another Order in the form hereof, appointing another Receiver approved by the Bank and acceptable to the Court. The new Receiver shall comply with the terms hereof, including posting the bond in the stated amount within seven (7) business days of entry of the Order, on the same terms and conditions set forth herein. If an appointment becomes null and void, the Receiver shall place any security or other deposits it holds and any funds in the operating accounts into separate accounts with the Registry of the Court, where they shall remain until a successor Receiver is appointed by order or until further order of this Court.

6. The Receiver shall be and is hereby authorized to do the following in connection with his Powers:

a. Enter upon, receive, recover and take complete and entire exclusive possession, and control and management of the Collateral including the Proceeds,

security, utility or other deposits relating to the Collateral, and all contracts, agreements, leases and matters pertaining thereto;

b. Collect all Proceeds acquired hereafter and collect and pay any sales, excise or tourist tax which became due hereafter under leases or agreements or due upon the sale of goods or services provided by the Receiver after the date of this Order;

c. Obtain and retain custody of all the Collateral and records and documents pertaining thereto until further Order of this Court; provided, however, he shall make them available for review and inspection to the parties upon reasonable prior written notice;

d. Preserve, operate, protect, repair, manage and maintain the Collateral to avoid waste thereto;

e. Hire the management company Janus Hotels and Resorts, Inc. c/o James E. Bishop (the "Management Company") to manage the day-to-day operations involving the Collateral, including but not limited to accounting functions;

f. All of the foregoing matters are subject and subordinate to the Bank's liens, rights and remedies under the Loan Documents, Chapter 679, Florida Statutes, and other laws and to any similar rights of the other mortgagees;

g. Deal and communicate with any governmental agency that has issued a license to the Borrower, including but not limited to alcoholic beverage, occupational, restaurant, health, and water and sewer licenses, and such agencies are authorized to deal and communicate with the Receiver with respect to all aspects of such licenses.

7. The Receiver shall have and is hereby given all the usual, customary, necessary and incidental authority and powers of a receiver for the purposes of executing and implementing

the Powers, and, if applicable, Additional Powers; provided however, that any action or decision taken by the Receiver beyond the Powers or Additional Powers is subject to the prior, written approval of the Bank or approval of the Court. Except as expressly authorized herein, the Receiver shall not encumber, or except in the ordinary course, dispose of or transfer any of the Collateral without the express written consent of the Bank and approval of the Court after notice and hearing.

8. The Receiver is hereby authorized and empowered to and shall keep in effect or obtain in the appropriate amounts (as approved by the Bank or the Court) fire, flood and extended coverage, casualty, property damage and liability insurance on the Property, and the Receiver and the Bank (and any other consensual mortgagees which so request it) shall be named as additional insureds on all such insurance policies.

9. The Receiver shall pay all the reasonable necessary and ordinary expenses relating to the Collateral in order to carry out his Powers or Additional Powers but only to the extent incurred by him. However, with the express written consent of the Bank or, if in the reasonable opinion of the Receiver after consulting with the Bank, the failure to pay unpaid expenses incurred by the Borrower for trade goods or ordinary course services will preclude him from obtaining goods or services critically necessary to protect and preserve the Collateral and such goods or services cannot be replaced, the Receiver may pay all or a portion of said unpaid expenses.

10. The individual duties and obligations of Walter C. Shepard, Jr. in the Order Granting Plaintiff's Motion to Enforce Assignment of Rents, Leases and Other Agreements and Sequester Accounts and Other Revenues dated January 31, 2000, (the "Sequestration Order") are

not affected by this Order. The Receiver shall not be bound by the Budgets attached to the Sequestration Order.

11. Subject to the written consent of the Bank, the Receiver may obtain, after first utilizing any Proceeds authorized to be expended by this Order, additional funds necessary to execute his Powers or Additional Powers from the Bank by issuing receiver's certificates to the Bank (the "Receiver Certificates"), which shall have an interest rate equal to the non-default note under the Loan Documents. Without approval of the Court upon notice and hearing (the Receiver or Bank may seek emergency relief if reasonable under the circumstances), the aggregate amount of the Receiver's Certificates issued by the Receiver shall not exceed \$250,000. The Receiver Certificates shall be recorded by the Receiver and shall constitute a priority first lien on the Collateral superior to all other liens on the Collateral and shall be paid first from Proceeds (to the extent available) existing after payment of the expenses authorized by this Order, and, if necessary, from the sale or refinancing of the Collateral, including any foreclosure sale. Except as approved by the Bank in writing, any outstanding Receiver Certificates shall be paid (in whole or in part) as soon as there are sufficient Proceeds to pay the same without materially and adversely affecting the Collateral. This may be monthly or on another periodic basis. In any event, the Receiver Certificates and all sums due thereon shall mature no later than the business day immediately prior to the day of the foreclosure sale of the Collateral or six (6) months from issuance, whichever is earlier. If the Receiver Certificates are not paid when due, the Bank shall have the right to foreclose its lien pursuant to the Receiver Certificates in the Collateral as part of this action by including the amount due in any foreclosure judgment entered by the Court.

12. If prior, written approval is received from the Bank or the Court, the Receiver may employ such professional agents, accountants and attorneys as may be reasonably necessary to enable the Receiver to execute his Powers or Additional Powers.

13. The Receiver shall prepare and file with the Court, as provided in Rule 1.620, Florida Rules of Civil Procedure, a true and complete inventory, under oath, of all the Collateral, and proceeds therefrom, of which the Receiver is hereby given custody and possession.

14. The Receiver is directed to prepare on or before the fifteenth (15th) of every month commencing March 15, 2000, so long as the Collateral (including Proceeds) shall remain in the Receiver's possession, custody, and care, a full and complete report (including profit and loss statement with year-to-date figures) as to the prior month's operations, assets, collections and disbursements as required by Rule 1.620, Florida Rules of Civil Procedure. At the same time, the Receiver shall report to the parties all changes during the reporting period in the assets and liabilities and operations, including checking account balances, escrow balances, cash flow position, profit and loss and balance sheet positions, guests, tenants, or licensees that occupy or reside on any portion of the real property portion of the Collateral. The Receiver also shall provide to the parties a monthly status report of any receipts and deposits and a property condition report. The Receiver shall file such reports with the Clerk of the Court and shall serve a copy of each report upon counsel for the Bank and upon the Borrower and any other parties. Upon request by the Bank or other mortgagees, the Receiver shall provide or make available all documentation reasonably requested which explains the reports and information required to be provided under this Order, and the Receiver shall permit access to the Collateral by the Bank, Borrower or other mortgagees or their agents and consultants and upon twenty-four (24) hour

prior notice; provided, however, they shall not interfere with the Receiver's operation, possession and management of the Collateral authorized under this Order.

15. The Borrowers, Walter C. Shepard, Jr. and Brian W. Sparks and their agents, representatives, employees, partners, and officers are hereby directed and ordered to turnover and deliver to the Receiver immediately after entry of this Order (a) the Collateral and all deposits, escrow or security deposits, utility deposits (or agree to their assignment), bank or other deposits relating to the Collateral, cash, checks, and all Proceeds which are or may come into the Borrower's or their agents or employees' possession; (b), all books, records (including but not limited to financial statements, maintenance reports, invoices, balance sheets, rent rolls, customer lists, notes, mortgages and security agreements, agreements, check registers, bank statements, ledgers, journals, checks, notices, correspondence, invoices, contracts and leases), the Borrower's corporate book and any minutes, and such other items and documents as are determined necessary by the Receiver to carry out the terms of this Order or his Powers; and (c) all keys relating to the Collateral. Brian W. Sparks, Walter C. Shepard, and all employees of the Borrower shall not remove any of the foregoing from the premises which is part of the Collateral and shall obtain and return thereto any of the foregoing documents which are located at their homes, other places of business, or anywhere else. The employees, agents, officers and representatives of the Borrower currently working at the River Ranch Resort shall be subject to the direction and authority of the Receiver except as otherwise required by law; however, the Receiver shall have the right to retain or discharge said persons or alter their compensation and benefits with or without notice as he determines in his sole and absolute discretion, subject only to any employee termination requirements or conditions imposed by law, if any. However, until at least March 31, 2000, the Receiver agrees (a) not to sell or dispose of any of the Collateral and

(b) to retain the current employees of the Borrower (excluding Brian W. Sparks, Walter C. Shepard, Jr., Max Cawal, or Brian Hollingsworth or anyone related to them by blood or marriage); provided, however, the Receiver may refuse to rehire or terminate any employee for cause during this time frame if he or she refuses or fails to carry out the directions or instructions of the Receiver or any employee of the Management Company designated by the Receiver.

16. The Receiver shall maintain a bank account at a federally insured institution (which may include the Bank) in the name of the Receiver in which shall be deposited all Proceeds received by the Receiver and from which the Receiver shall pay the expenses authorized to be incurred under this Order.

17. The Receiver shall be entitled to be paid each month a receiver fee of the greater of 2.0% of gross collections of the Collateral or \$4,000.00 plus ordinary out-of-pocket expenses such as telephone, postage, and gas (the "Receiver Fee"). The Management Company shall be entitled to be paid each month a management fee of the greater of 2.0% of gross collections of the Collateral or \$4,000.00 plus ordinary out-of-pocket expenses such as telephone, postage, and gas (the "Management Fee"). The Receiver shall file and serve an accounting of his time expended and services rendered as part of his monthly report which shall be subject to review and bona fide objection by the parties. Subject to its right to object, the Bank shall be responsible for the payment of the Receiver Fee to the extent the Proceeds are insufficient to pay the same. Any such sums advanced by the Bank shall be allowed as an administrative priority expense and be secured by a first lien in the Collateral and shall be treated as if funded pursuant to Receiver's Certificates.

18. During the receivership, any amounts remaining each month beyond funds necessary to execute the Powers and, if applicable, the Additional Powers and pay the expenses

authorized to be incurred by this Order, and payment of the Receiver Fee and Management Fee with the exception of maintaining an aggregate reserve of \$2,500.00, shall be paid on the fifteenth (15th) of each month, commencing March 15, 2000, to the Bank, c/o John D'Errico, The Forum, Suite 4B, 1675 Palm Beach Lakes Blvd., West Palm Beach, Florida 33401, to be applied first to (a) any sums due for advances made under this Order and under any Receiver Certificates; and, then (b) the outstanding indebtedness due to the Bank as provided in the applicable Loan Documents. However, any sums paid to the Bank pursuant to this Order shall not in any way affect, waive or alter the Bank's rights under the applicable Loan Documents, including the right to foreclose its lien on the Collateral or other collateral pledged or other property provided or available to secure and satisfy the Loan. Any sums remaining after payments to the Bank or authorized by this Order shall be disbursed only as directed by further order of this Court.

19. The Borrower, and any of its agents, employees, officers, directors, or representatives are hereby enjoined and prohibited from interfering with any of the Receiver's duties and authority set forth herein, including the Powers or Additional Powers, or the duties of the Management Company and they agree to fully comply with the orders of the Court and instructions and directions of the Receiver, including executing documents and providing information. Subject to the foregoing limitations and requirements and the requirement that he is precluded from giving or attempting to give instructions or direction to any person working under the direction of the Receiver (including any employee that worked for the Borrower) and so long as the Receiver, a representative of the Management Company, or an employee designated by the Receiver is present on the real property which is part of the Collateral, Brian W. Sparks may until March 31, 2000: (a) come onto the resort premises; (b) during normal

business hours, have exclusive use his office and non-exclusive use of the conference room located at the "Lodge" (The exclusive use by Mr. Sparks herein shall not limit the right of the Receiver or a representative of the Management Company to enter said office to carry out their duties and responsibilities under this Order Appointing Receiver and his use of the conference room is subordinate to the legitimate needs of the Receiver); and (c) have access to the common areas and amenities of the River Ranch Resort, each of above items (a)-(c) being solely for purposes of complying with the terms of this Order, fulfilling the directions of the Receiver or the Management Company, or negotiating a possible sale or re-financing of the Collateral or other financial arrangement to satisfy the indebtedness secured by the Collateral.

20. The Receiver shall, during the pendency of this action, have the right to apply to this Court for further instructions or direction, and this Court reserves jurisdiction to enforce and modify the terms of this Order.

21. This Order is without prejudice to the rights, if any, of the subordinate mortgage holders (a) against the Borrower, Brian W. Sparks, or Alan C. Shepard or (b) to raise as to the Bank whatever rights they may have and vice versa; provided, however, such rights, if any, of the subordinate mortgage holders shall not affect any rights granted to the Bank pursuant to this Order or the Sequestration Order, except First Capital Services, Inc. retains the right to assert that it has not waived any objection it had to the Bank's right to receive payment from the Borrower under the Sequestration Order.

DONE and ORDERED at Viera, Brevard County, Florida, this 28th day of February 2000.

Original Signed By
George W. Maxwell III
Circuit Judge

Circuit Judge

STATE OF FLORIDA
COURT OF BREVARD
I HEREBY CERTIFY that the foregoing is a true copy of the original.
SANDY NEWFORD, Clerk of Circuit and County Court
DATED 2/28/00

cc: Mark Wolfson, Esquire
Andrew J. Bolnick, Receiver
Brian Mark, Esquire
Peter Hill, Esquire
Walter C. Shepard, Jr.
Brian W. Sparks
River Ranch American Resorts, Inc.
James N. Powell, Esquire
Tom Jennings, Esquire, for New River Ranch L.C.
Howard DuBosar, Esquire
State of Florida, Department of Revenue
State of Florida, Division of Unemployment Compensation
Lakeland Ledger