

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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CITIZENS & NORTHERN BANK,

Plaintiff,

-against-

PEMBROOK PINES MASS MEDIA, N.A.,
CORP., and ROBERT J. PFUNTNER,

Defendants.
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ORDER

Civil Action No. 09-CV-6385

Upon Plaintiff's Motion to Appoint a Receiver pursuant to New York CPLR 5228, as incorporated under Fed. R. Civ. Proc. Rule 69(a) dated January 4, 2011 (Docket No. 9) ("Motion"), and no objection having been timely filed, and a hearing having been held on the Motion on February 18, 2011, and William Baaki of Phillips Lytle LLP appearing at the hearing on behalf of the Plaintiff and no party appearing on behalf of the Defendants, and due and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is GRANTED as set forth herein; and it is further

ORDERED that Richard A. Foreman shall serve as Receiver over Pembroke Pines Mass Media, N.A., Corp. ("Pembroke"), pending the final disposition of this action to (i) preserve the *status quo*, (ii) determine if there have been any fraudulent transfers of Pembroke assets or funds; (iii) ascertain the true financial condition of Pembroke and the sources and uses of funds; (iv) prevent further dissipation of the property and assets of Pembroke and all entities it has an ownership interest in; (v) prevent the encumbrance or improper disposal of property or assets of Pembroke; (vi) preserve the books, records and documents of Pembroke; (vii) collect, improve, lease, repair and sell Pembroke assets necessary to satisfy the Judgment entered in this case

dated September 17, 2010 (Docket No. 7); and (viii) determine whether Pembroke should undertake bankruptcy filings.

To effectuate the foregoing, the Receiver is empowered to:

- (a) Take and retain immediate possession and control of all of the assets, including but not limited to all books, records and documents, of Pembroke, and assume all the rights and powers of these assets with respect thereto including the powers set forth in the applicable management agreements, by-laws, LLC agreements or any other controlling agreements;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of Pembroke;
- (c) Pay from available funds of Pembroke the necessary expenses required to preserve the assets and property of Pembroke, including the books, records, and documents of Pembroke and all entities it controls or has an ownership interest in;
- (d) Succeed to all rights to manage all properties owned or controlled, directly or indirectly, by Pembroke, pursuant to applicable management agreements, by-laws, LLC agreements, or other controlling agreements;
- (e) Take steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (f) Engage and employ persons, including brokers, accountants, attorneys and experts, to assist in the carrying out of the Receiver's duties and responsibilities hereunder;

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- (g) Establish a cash management system by closing, transferring, consolidating and opening bank accounts, so long as records are kept of the sources and uses of all funds;
- (h) Invest all cash of Pembroke in U.S. government securities or U.S. government guaranteed securities having remaining maturities of up to two years and in money market accounts maintained by financial institutions having net worths of no less than \$50 billion;
- (i) Discharge his duties as Receiver by making and authorizing in the ordinary course payments and disbursements from the funds and assets under his control, incurring expenses, and entering into agreements, including loan agreements and credit facilities, brokerage agreements, professional services engagement, all as reasonably necessary or advisable under the circumstances;
- (j) Investigate, prosecute, defend, intervene in, and otherwise participate in, compromise and adjust actions in any state, federal, administrative, or foreign tribunal of any kind, or any potential actions or claims, as the Receiver believes in his sole discretion advisable or proper to collect, conserve, or otherwise recover the assets of Pembroke, or entities they own or control;
- (k) Notwithstanding the terms of this Order, borrow monies and encumber assets of Pembroke, or the entities it owns or controls, to the extent such actions are deemed necessary by the Receiver based on his own experience and input from his advisors to be most beneficial to preserving enterprise value for Pembroke and those entitled to proceeds;

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- (l) Use, lease, sell, and convert into money all assets of Pembroke, either in public or private sales or other transactions on terms the Receiver reasonably believes based on his own experience and input from his advisors to be most beneficial to Pembroke and those entitled to the proceeds; provided, however, all leases and sales of property appraised for or having a cost basis of \$100,000 or more shall only be consummated with prior court approval on at least four (4) business days' written notice (unless shortened by court order) to the Defendants (via ECF, facsimile, e-mail, and/or hand delivery to their respective counsel of record); provided further that the Receiver may apply for an order under seal or *in camera*, as circumstances require;
- (m) Take all necessary steps to gain control of Pembroke's interests in assets including filing the appropriate application to transfer control of Pembroke's Federal Communications Commission licenses to the Receiver; and
- (n) Take such further action as the Court shall deem equitable, just, and appropriate under the circumstances upon proper application of the Receiver; and it is further

ORDERED that the Receiver and all persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder, or any of their partners, officers, directors, members, employees, or agents, shall be immune from liability for all actions or omissions within the scope of the Receiver's authority. This provision shall apply to claims based on conduct during the term of any agreement entered into between the Receiver and any other person who may be engaged or employed by the Receiver hereunder, even if such claims are filed after the termination of any such agreement; and it is further

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ORDERED that in lieu of providing retainers to the Receiver and his advisors, all payments made pursuant to the foregoing procedures prior to the initiation of any voluntary or involuntary petition for relief under the United States Bankruptcy Code, or foreign insolvency proceeding, shall be deemed payments made according to ordinary business terms and incurred in the ordinary course of business or financial affairs of the transferees and Pembroke and not subject to avoidance as a preferential payment; and it is further

ORDERED that no person or entity, including any creditor or claimant against Pembroke or any person acting on behalf of such creditor or claimant, shall take any action without further order of the Court to interfere with the taking control, possession or management of the assets, including but not limited to the filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this order; and it is further

ORDERED that the Receiver shall be entitled to draw from Pembroke and pay fees and expenses as Receiver and the reasonable costs, fees and expenses of all persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations, from the available funds of Pembroke up to \$17,500 per month, subject to an accounting and final approval by the Court. To the extent adequate funds of Pembroke are not available, the Defendants are jointly and severally liable for the reasonable costs, fees and expenses of the Receiver incurred in connection with the performance of his duties as described herein, including but not limited to, the reasonable costs, fees and expenses of all persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses of the Receiver and those employed by him shall be

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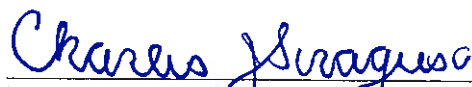
made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses, with notice to all parties and an opportunity to be heard; and it is further

ORDERED that, pending final disposition of this action, the Defendants, any person or entity acting at their direction or on their behalf, or any other person, are (1) restrained and enjoined from destroying, altering, concealing or otherwise interfering with the access of the Receiver to any and all documents, books and records, that are in the possession, custody or control of the Defendants, and each of their officers, agents, employees, servants, accountants, financial or brokerage institutions, attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, that concern Pembroke including, without limitation, documents, books, and records referring, reflecting or relating to Pembroke's finances or business operations; and (2) ordered to provide all reasonable cooperation to the Receiver in carrying out his duties set forth herein; and it is further

ORDERED that this Order shall be, and is, binding upon the Defendants and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise; and it is further

ORDERED that all of Plaintiff's rights with respect to pursuing receivership of the assets of co-defendant Robert J. Pfuntner are preserved.

DATED: February 29, 2012



Hon. Charles J. Stragusa, U.S.D.J.