

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION
CIVIL ACTION NO.

LLOYDS BANK PLC, f/k/a Lloyds TSB Bank plc,)
in its capacity as Facility Agent,)
)
Plaintiff,)
)
v.)
)
SERVICE POINT USA, INC.,)
)
Defendant, and)
)
CITIZENS BANK OF MASSACHUSETTS,)
)
Trustee Process Defendant.)

ORDER FOR APPOINTMENT OF RECEIVER ON NOTICE

Having considered the Motion for Appointment of Receiver by Plaintiff Lloyds Bank, plc, f/k/a Lloyds TSB Bank, plc, in its capacity as Facility Agent for certain secured lenders (the "Agent"), and defendant Service Point USA, Inc. ("SPU"), the Affidavit of Andrew Moore, the Plaintiff's memorandum of law filed in support of its motion, and finding that there is good cause, after proper service upon and notice to SPU and an opportunity for SPU to be heard having been given, and pending further hearing and order of this Court,

IT IS ORDERED that:

1. The Agent's Motion for Appointment of a Receiver is allowed, and Francis C. Morrissey, Esq. is appointed Receiver in accordance with the following provisions of this Order.
2. The Receiver is hereby authorized, empowered and directed to:
 - a. enter into all past and present business locations of SPU and take immediate possession, custody and control of all property of SPU located therein, and all fixtures, equipment and all other tangible and intangible property that are collateral,

including, but not limited to, all cash and accounts maintained by SPU and all accounts receivable within 5 days of the entry of this Order; and the Court orders SPU to turn over all such materials in its possession to the Receiver within 5 days from the date of entry of this Order;

- b. Receive and collect SPU's accounts receivable;
- c. take all steps necessary to conduct an inventory of all tangible and intangible property of SPU, all cash and accounts, and all receivables and liabilities, with the inventory due to the Court within 30 days of the entry of this Order;
- d. take possession of all books, records, papers, leases, rent rolls, utility records, account records and other documents and collateral, including floor plans and mechanical plans, and the Court orders SPU to turn over all other such materials in its possession to the Receiver within 5 days from the date of entry of this order;
- e. take all actions reasonably necessary to preserve SPU's assets;
- f. provide a final accounting of the receivership estate;
- g. compensation for the Receiver shall be \$375.00 per hour;
- h. seek additional authorizations or modifications of this Order upon Motion, Notice, and further Court Order.

3. This Order directs any and all individuals and entities with actual or constructive notice of the receivership to cooperate with the Receiver's efforts to take possession of the collateral and related assets; tenants are directed to pay over to the Receiver all rents and other amounts due.

4. This Order enjoins any and all individuals and entities with actual or constructive notice of the receivership from directly or indirectly interfering with the Receiver's efforts to discharge its duties as Receiver; SPU is enjoined and restrained from the collection of any rent, and if any rents are received, those rents should be forthwith to the Receiver.

5. This Order enjoins any and all individuals and entities with actual or constructive notice of the receivership from concealing, dissipating, or destroying the assets of the receivership estate or any books and records thereto.

6. Every one hundred eighty (180) days from the date of this Order, the Receiver shall file a Report with the Court summarizing its activities, providing an accounting of funds, assets and property in its possession, and reporting the status of any legal issues or claims. The Receiver shall include in that Report an accounting of all receivership payments made in accordance with the terms and conditions of this Order. The Receiver shall serve a copy of that Report to all parties who have entered an appearance in this matter.

7. The Receiver may open and maintain operating and any other necessary bank accounts, in the name of the receivership estate, with a federally insured banking institution.

8. The Receiver shall issue demands in the name of the receivership upon the U.S. Postal Service to gain exclusive possession and control of such postal boxes as may have been used by SPU for the receipt of mail, and take any other steps as the Receiver deems reasonable and necessary to retrieve, collect and review all mail addressed to SPU.

9. The Receiver may institute and prosecute all suits against third parties as may be reasonably necessary in the Receiver's judgment to protect, preserve, and collect estate assets, and to defend any and all suits and actions as may be instituted against the Receiver. The Receiver may also institute and prosecute suits or other proceedings against SPU or any other person to enforce the terms of this Order.

10. Upon Receiver's receipt of notice of the commencement of a bankruptcy case in which any or all of the Excluded Assets are part of the bankruptcy estate, Receiver shall retain possession and control of the receivership estate and continue to perform Receiver's duties as set forth in this Order until such time as (i) the Agent confirms in writing that it will not seek to excuse the Receiver from the turnover requirements of 11. U.S.C. §543, or (ii) an order is entered by the bankruptcy court directing the Receiver otherwise.

11. The Receiver is required to exercise good faith business judgment in fulfilling his duties and responsibilities under this Order. The Receiver is entitled to reply on all outstanding rules of law and court orders, and shall not be liable to anyone for his good faith compliance with any order, rule, law, judgment, or decree. The Receiver shall not be liable for complying with the orders of this Court. In no event, shall the Receiver

be liable for his good faith compliance with the terms and provisions of this Order, nor shall he be liable to anyone for any action taken or omitted by him except upon a finding by this Court that he acted or failed to act as a result of misfeasance, bad faith, gross negligence, or in reckless disregard of his duties.

12. The receivership estate shall indemnify and hold harmless Receiver, his partners, employees, attorneys and agents from any claims made by persons, including those not a party to this Order, which claims arise out of the operation of this receivership, except in a case where Receiver has acted outside the scope of his authority, or committed fraud or intentionally misrepresented his ministerial authority as Receiver, or acted with gross negligence. In the event a suit is filed against Receiver, his partners, employees, attorneys and/or agents, over an issue arising out of this action, the receivership estate shall reimburse Receiver for the fees and costs of defending such action, including any appeals thereof to final resolution and award of judgments.

13. Nothing contained in this Order shall prohibit, limit, or restrain the Agent from enforcing its respective rights and exercising its respective remedies under applicable law and under the underlying loan documents against SPU.

14. The Agent, the Lenders, and their respective subsidiaries, affiliates, owners, members, managers, officers, directors, agents, representatives, shareholders, bond holders, attorneys and employees shall not be liable for any act or omission of the Receiver or its owners, members, managers, officers, directors, agents, representatives, shareholders, and employees. Neither the Agent or the Lenders shall be deemed to be a mortgagee in possession as a result of:

1. The appointment of a Receiver pursuant to this Order; and
2. The Receiver's taking possession of the Excluded Assets; and
3. The Agent initiating and/or completing any sale of Collateral other than Excluded Assets.

15. The provisions of this Order shall remain in full force and effect until further Order of the Court.

Entered as an Order of this Court this 30th day of December, 2013.

ENTER:

12/30/13

ORDERED: 

M.B. McDonald
ast. Clerk