

**DEBTOR/CREDITOR RIGHTS COMMITTEE
REPORT PREPARED FOR THE MAY 4, 2012 COUNCIL MEETING**

1. Next Scheduled Meeting of the Committee

Next scheduled meeting of the Committee: May 1, 2012 at 6:00 p.m. at the offices of Jaffe Raitt Heuer & Weiss, P.C., which will include an educational presentation on recent and new law on recourse liability for non-recourse loans.

2. Council Approval

A committee formed at the request of the Michigan Supreme Court, headed by the Honorable Kirsten Frank Kelly of the Michigan Court of Appeals, is drafting proposed amendments to MCR 2.621 and MCR 2.622 relating to the appointment and regulation of receivers. The proposed rules are attached. The Michigan Supreme Court wants to know that the Business Law Section and certain other bar groups approve of the proposed amendments before the Court institutes the formal rule approval process. Therefore, the Committee requests such approval of the attached proposed amendments.

3. Membership

The Committee communicates regularly with its membership through its list serv, with announcements of Committee events, case law alerts, and announcements of events of interest to bankruptcy and insolvency law practitioners. This increases the Committee's profile. We regularly receive inquiries from bar members about joining the Committee and respond immediately to reach out to the individuals. In addition, holding regular meetings and events increases the interest of the bar in becoming members.

4. Accomplishments Toward Committee Objectives

See other entries.

5. Meetings and Programs

The Committee is having a regular meeting on May 1, 2012, with an educational presentation by Gregory J. DeMars of Honigman Miller Schwartz and Cohn LLP and Mark P. Krysinski of Jaffe Raitt Heuer & Weiss, P.C. on "New Considerations – A Year in the Sudden Development of the Law of Recourse Liability for Non-Recourse Loans."

The Committee co-sponsored an event with the Federal Bar Association – Eastern District of Michigan Chapter, Bankruptcy Committee on March 21, 2012 at the Atheneum in Detroit, where the Honorable Steven W. Rhodes, who recently co-authored *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*, spoke on Ponzi schemes and signed copies of his book. It was a very successful event, with over 130 attending.

6. Publications

The Committee is responsible for the March 2013 edition of the Michigan Business Law Journal. We discussed articles at our January 11, 2012 meeting and plan to discuss the topic again at the next meeting.

7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action

Our members are active in informing us about legal developments so that they or one of the co-chairs can draft and send case law alerts on the list serv to the membership. Also, the co-chairs individually and through bar groups monitor new developments to discuss at our meetings or for the basis of case law alerts.

Our Committee has been advocating that the Michigan Legislature amend Michigan's exemption laws to correct both the problem of pre-emption by federal and the confusion of having two paralleled but inconsistent exemption statutes. Finally, bills have been introduced in both the Senate, Senate Bill No. 895, and the House, House Bill No. 5427, to address these problems. House Bill No. 5427 more closely resembles the Committee's proposed bill. Thomas Morris is already in contact with the sponsors of Senate Bill No. 895, about the issues omitted from the Senate Bill. He is also actively approaching other bar groups seeking their support for the amendments, including a debate on April 26, 2012 at a Consumer Bar Association meeting.

8. Miscellaneous

Not applicable.

Co-Chairs
Judy B. Calton
Judith Greenstone Miller

Rule 2.621 Proceedings Supplementary to Judgment

(A) Relief Under These Rules. When a party to a civil action obtains a money judgment, that party may, by motion in that action or by a separate civil action:

- (1) obtain the relief formerly obtainable by a creditor's bill;
- (2) obtain relief supplementary to judgment under MCL 600.6101-600.6143 and
- (3) obtain other relief in aid of execution authorized by statute or court rule.

(B) Pleading.

(1) If the motion or complaint seeks to reach an equitable interest of a debtor, it must be verified, and

(a) state the amount due the creditor on the judgment, over and above all just claims of the debtor by way of setoff or otherwise, and

(b) show that the debtor has equitable interests exceeding \$100 in value.

(2) The judgment creditor may obtain relief under MCL 600.6110, and discovery under subchapter 2.300 of these rules.

(C) Subpoenas and Orders. A subpoena or order to enjoin the transfer of assets pursuant to MCL 600.6119 must be served under MCR 2.105. The subpoena must specify the amount claimed by the judgment creditor. The court shall endorse its approval of the issuance of the subpoena on the original subpoena, which must be filed in the action. The subrule does not apply to subpoenas for ordinary witnesses.

(D) Order Directing Delivery of Property or Money.

(1) When a court orders the payment of money or delivery of personal property to an officer who has possession of the writ of execution, the order may be entered on notice the court deems just, or without notice.

(2) If a receiver has been appointed, or a receivership has been extended to the supplementary proceeding, the order may direct the payment of money or delivery of property to the receiver.

(E) Receivers. When necessary to protect the rights of a judgment creditor, the court may appoint a receiver in a proceeding under subrule (A)(2), pending the determination of the proceeding held in conformance with MCR 2.622.

(F) Violation of Injunction. The court may punish for contempt a person who violates the restraining provision of an order or subpoena or, if the person is not the judgment debtor, may

enter judgment against the person in the amount of the unpaid portion of the judgment and costs allowed by law or these rules or in the amount of the value of the property transferred, whichever is less.

(G) New Proceeding. If there has been a prior supplementary proceeding with respect to the same judgment against the party, whether the judgment debtor or another person, further proceedings may be commenced against that party only by leave of court. Leave may be granted on ex parte motion of the judgment creditor, but only on a finding by the court, based on affidavit of the judgment creditor or another person having personal knowledge of the facts, other than the attorney of the judgment creditor. The affidavit must state that

(1) there is reason to believe that the party against whom the proceeding is sought to be commenced has property or income the creditor is entitled to reach, or, if a third party, is indebted to the judgment debtor;

(2) the existence of the property, income, or indebtedness was not known to the judgment creditor during the pendency of a prior supplementary proceeding; and

(3) the additional supplementary proceeding is sought in good faith to discover assets and not to harass the judgment debtor or third party.

(H) Appeal; Procedure; Bonds. A final order entered in a supplementary proceeding may be appealed in the usual manner. The appeal is governed by the provisions of chapter 7 of these rules except as modified by this subrule.

(1) The appellant must give a bond to the effect that he or she will pay all costs and damages that may be awarded against him or her on the appeal. If the appeal is by the judgment creditor, the amount of the bond may not exceed \$200, and subrules (H)(2)-(4) do not apply. If the appeal is by a party other than the judgment creditor, subrules (H)(2)-(4) apply.

(2) If the order appealed from is for the payment of money or the delivery of property, the bond of the appellant must be in an amount at least double the amount of the money or property ordered to be paid or delivered. The bond must be on the condition that if the order appealed from is affirmed in whole or in part the appellant will

(a) pay the amount directed to be paid or deliver the property in as good condition as it is at the time of the appeal, and

(b) pay all damages and costs that may be awarded against the appellant.

(3) If the order appealed from directs the assignment or delivery of papers or documents by the appellant, the papers must be delivered to the clerk of the court in which the proceeding is pending or placed in the hands of an officer or receiver, as the judge who entered the order directs, to await the appeal, subject to the order of the appellate courts.

(4) If the order appealed from directs the sale of real estate of the appellant or delivery of possession by the appellant, the appeal bond must also provide that during the possession of the property by the appellant, or any person holding under the appellant, he or she will not commit or suffer any waste of the property, and that if the order is affirmed he or she will pay the value of the use of the property from the time of appeal until the delivery of possession.

Rule 2.622 Receivers

(A) For good cause shown, the court may order the appointment of a receiver in any action or proceeding. A receiver appointed under this section shall be deemed a fiduciary for the benefit of all persons appearing in the action or proceeding which claim an interest in the receivership estate, and shall exercise his or her office accordingly. "Receivership Estate" means the entity, person, or property subject to the receivership.

(B) The order of appointment shall set forth the responsibilities of the receiver, including but not limited to:

- (1) bonding amounts and requirements as provided in (I);
- (2) real and personal property of the receivership estate;
- (3) compensation of receiver and source of such payment as provided in subsection (G);
- (4) required reporting including the final report and accounting;
- (5) duties, authority and powers of the receiver; and
- (6) a detailed listing of property to be surrendered to the receiver.

(C) Qualifications.

- (1) When appointing a receiver, the court shall defer to the petitioner's choice of Receiver and shall also separately consider and make findings of fact as to the proposed receiver, on each of the following:
 - (a) Experience in the operation and liquidation of the type of assets to be administered.
 - (b) Applicable business, legal and receivership knowledge, if any;
 - (c) Capacity to obtain the required bonding if more than a nominal bond is required
 - (d) Objections of the adverse party to the petitioner's choice of receiver;

(e) The proposed receiver's relationship if any, to the subject matter of the controversy and whether it will interfere with the impartial discharge of the receiver's duties;

(f) The petitioner's nominated receiver if any; and

(g) Any other factor the court deems appropriate.

(2) Except as otherwise provided by law or by subrule (C)(1), a person or entity may not serve as a receiver; or other professional representing or assisting the receiver, if such person or entity:

(a) is a creditor or a holder of an equity security of the receivership estate;

(b) is or was an investment banker for any outstanding security of the receivership estate;

(c) has been, within three years before the date of the appointment of a receiver, an investment banker for a security of the receivership estate, or an attorney for such an investment banker, in connection with the offer, sale, or issuance of a security of the receivership estate;

(d) is or was, within two years before the date of the appointment of a receiver, a director, an officer, or an employee of the receivership estate or of an investment banker specified in subrule (b) or (c) of this section, except that an employee of the receivership estate may serve as a receiver if the court finds that this is in the best interest of the receivership estate and that there is no actual conflict of interest by reason of the employment;

(e) has an interest materially adverse to the interest of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the receivership estate or an investment banker specified in subrule (b) or (c) of this section, or for any other reason;

(f) otherwise has or represents an interest adverse to the receivership estate or stands in any relation to the subject of the controversy that would tend to interfere with the impartial discharge of his duties as an officer of the court.

(g) has, at any time within five years before the date of the appointment of a receiver, represented or been employed by the receivership estate or any secured creditor as an attorney, accountant, appraiser, or other professional, if the court finds an actual conflict of interest by reason of the representation or employment;

(h) is an "insider" as defined by MCL 566.31(9); or

(i) represents or is employed by an unsecured creditor of the receivership estate and, on objection of a person in interest, the court finds an actual conflict of interest by reason of the representation or employment.

(3) Any professional who has represented or has been employed by the entity, person or property subject to receivership is eligible to serve for a specified limited purpose if the court determines such employment is in the best interest of the receivership estate and if such professional does not represent or hold any interest materially adverse to the receivership estate

(D) Duties.

(1) Within seven days after entry of the order of appointment, the receiver shall file an acceptance of receivership with the court. The order of appointment and acceptance must be served on all parties to the action and any known creditors holding a security interest against property in the Receivership Estate.

(2) Unless otherwise ordered, within twenty-eight days of qualifying, the receiver shall provide notice of entry of the order of appointment, to any person or entity having a recorded interest in all or a part of the Receivership Estate.

(3) File with the court a complete inventory of the property of the receivership estate within thirty-five days after entry of the order of appointment, unless such an inventory has already been filed;

(4) Keep a record of receipts and account for the disposition of money and property received;

(5) Perform such duties as specified in the order of appointment and subsequent orders of the court;

(6) If there are sufficient funds to make a distribution to a class of creditors, the Receiver shall request that creditors file written proofs of claim. The Receiver shall examine said proofs of claim and object to the allowance of any claim that is improper;

(7) Furnish such information concerning the receivership estate and administration as requested by interested parties; and

(8) File with the court a final written report and final accounting of the administration of the receivership estate.

(E) Powers

(1) A receiver has, unless otherwise ordered, general power and authority to sue for and collect all the debts, demands, and rents of the receivership estate, and to compromise and settle those that are unsafe and of doubtful character;

(2) A receiver may convert the personal property of the receivership estate into money. By order of the court a receiver may sell real property of the Receivership Estate;

(3) A receiver may pay the ordinary expenses of the receivership but may not distribute the funds in the Receivership Estate, to a party to the action, without an order of the court; and

(4) A receiver may only be discharged from the trust on order of the court.

(F) Notice When Other Action or Proceeding Pending; Appointment.

(1) If another action or motion to appoint a receiver is pending over any or all of the Receivership Estate and a receiver has not been appointed in that proceeding, notice of the application for the appointment of a receiver and of all subsequent proceedings respecting the receivership must be given, as directed by the court.

(2) If several actions or motions to appoint a receiver are filed against the same persons or property under receivership, only one receiver may be appointed, unless the first appointment was obtained by fraud or collusion, or the receiver is an improper person to serve as Receiver.

(3) If another proceeding is commenced after the appointment of a receiver, the same person may be appointed receiver in the subsequent proceeding, and must give further security as the court directs. The receiver must keep a separate account of the property of the debtor acquired since the commencement of the first proceeding, and of the property acquired under the appointment in the later proceeding.

(G) Compensation and Expenses of Receiver.

(1) A receiver shall be entitled to reasonable compensation for services rendered to the Receivership Estate.

(2) The order appointing a receiver shall specify:

(a) The manner and method of compensation of the receiver;

(b) Interim compensation may be paid to the receiver after notice to all parties who have appeared in the receivership case and opportunity to object as provided in subsection (5);

(c) All compensation of the receiver is subject to final review and approval of the court.

(3) All approved fees and expenses incurred by a receiver, including professionals retained by the receiver, shall be paid or reimbursed as provided in the order of appointment.

(4) An application of a receiver for interim or final payment of fees and expenses shall include:

(a) A description in reasonable detail of the services rendered, time expended and expenses incurred;

(b) The amount of compensation and expenses requested;

(c) The amount of any compensation and expenses previously paid to the receiver;

(d) The amount of any compensation and expenses received by the receiver from or to be paid by any source other than the Receivership Estate;

(e) A description in reasonable detail of any agreement or understanding for a division or sharing of compensation between the person rendering the services and any other person except as permitted in subpart (5) hereof.

(5) To be paid, a receiver shall serve a notice of his request together with his application for compensation for which he seeks approval. The notice shall indicate that fees and expenses will be deemed approved if no written objections are filed with the court clerk within 7 days after service of the notice. The receiver must file with the court clerk the original notice and fee application and proof of its service on the parties.

If written objections are filed or if in the court's determination the application for compensation requires a hearing, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

(6) Without an order of the court, a receiver or person performing services for a receiver shall not, in any form or manner, share or agree to share compensation for services rendered to the Receivership Estate with any person other than a partner, employer, or regular employee of the person rendering the services.

(H) Bond.

(1) In setting an appropriate bond, the court may consider factors including but not limited to:

(2) Value of the Receivership Estate, if known

- (3) Cash or cash equivalents derived from the Receivership Estate;
- (4) Amount of assets on deposit in insured financial institutions or invested in U.S. Treasury obligations;
- (5) The assets in the Receivership Estate cannot be sold without further order of the court; or the receiver is a corporate entity with sufficient assets or acceptable errors and omissions insurance to cover any potential liabilities;
 - (a) any secured creditor is under-secured
 - (b) the Receivership Estate is a single parcel of real estate involving few trade creditors;
 - (c) the parties have agreed to a nominal bond;

(I) Claims Against Receiver.

- (1) All claims against the receiver or any employee, agent, appointee or contractor of the receiver for acts or omissions relating to the Receivership Estate must either be brought in the court appointing the receiver or leave must have been obtained from the appointing court to assert the claim in another forum. Failure to obtain prior permission to sue the receiver or any employee, agent, appointee or contractor of the receiver in a forum other than the appointing court is grounds to dismiss the claim.
- (2) If the receiver or the receiver's employee, agent, appointee or contractor was acting within the scope of the receiver's authority, the Receivership Estate shall be liable for the attorneys, experts, filing fees or other reasonable and necessary expenses, including satisfaction of judgments or payment of settlements approved by the appointing court, incurred by the receiver or the receiver's employee, agent, appointee or contractor incurred in the defense of such claims.

(J) Intervention. Any interested party requesting to be heard shall move for intervention pursuant to MCR 2.209.

(K) Removal of Receiver. After notice and hearing, the court may remove any receiver for good cause shown.

The references to the granting of a stay of proceedings by a single judge of the Court of Appeals or the Supreme Court, found in GCR 1963, 530.6, are omitted. See subrule (F).

Staff Comment to 1995 Amendment

The amendments of MCR 2.116(J)(1), 2.119(F)(1), 2.204(A)(4), and 2.614(G) correct cross-references to MCR 2.604 that were no longer correct after MCR 2.604 was amended on May 16, 1995, and further amended on September 19, 1995.

Staff Comment to 2008 Amendment

This amendment imposes an automatic stay of any and all proceedings in a case in which a party files a claim of appeal of a denial by the trial court of the party's claim of governmental immunity. No order is necessary for the stay to operate.

Comments of Justices to 2008 Amendment

CAVANAGH, J. I would deny the rule amendments.

WEAVER, J. I would deny the rule amendments.

KELLY, J. I would deny the rule amendments.

Staff Comment to 2009 Amendment

The amendments of MCR 2.614 conform to recent amendments of MCR 2.119, MCR 7.204, and MCR 7.205, adopted May 28, 2008, which clarified that a party seeking leave to appeal in the Court of Appeals has 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed to file a claim or appeal or an application for leave to appeal, if the motion is filed within the initial 21-day appeal period, or within further time the trial court has allowed for good cause during that 21-day period.

RULE 2.615 ENFORCEMENT OF TRIBAL JUDGMENTS

(A) The judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of a tribal court of a federally recognized Indian tribe are recognized, and have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of any court of record in this state, subject to the provisions of this rule.

(B) The recognition described in subrule (A) applies only if the tribe or tribal court

(1) enacts an ordinance, court rule, or other binding measure that obligates the tribal court to enforce the judgments, decrees, orders, warrants, subpoenas, records, and judicial acts of the courts of this state, and

(2) transmits the ordinance, court rule or other measure to the State Court Administrative Office. The State Court Administrative Office shall make available to state courts the material received pursuant to paragraph (B)(1).

(C) A judgment, decree, order, warrant, subpoena, record, or other judicial act of a tribal court of a federally recognized Indian tribe that has taken the actions described in subrule (B) is presumed to be valid. To overcome that presumption, an objecting party must demonstrate that

(1) the tribal court lacked personal or subject-matter jurisdiction, or

(2) the judgment, decree, order, warrant, subpoena, record, or other judicial act of the tribal court

(a) was obtained by fraud, duress, or coercion,

(b) was obtained without fair notice or a fair hearing,

(c) is repugnant to the public policy of the State of Michigan, or

(d) is not final under the laws and procedures of the tribal court.

(D) This rule does not apply to judgments or orders that federal law requires be given full faith and credit.

[Adopted May 14, 1996, effective July 1, 1996, 451 Mich.]

Comments

1996 Staff Comment

The 1996 amendment of MCR 2.112(G) and (J) and the 1996 promulgation of MCR 2.615 were prompted by proposals from the Indian Tribal Court/State Trial Court Forum and from the State Bar of Michigan. The adopted rules reflect a synthesis of those sources, of a corresponding rule of the North Dakota Supreme Court, and of the model rules generated by the Michigan Indian Judicial Association.

RULE 2.620 SATISFACTION OF JUDGMENT

A judgment may be shown satisfied of record in whole or in part by:

(1) filing with the clerk a satisfaction signed and acknowledged by the party or parties in whose favor the judgment was rendered, or their attorneys of record;

(2) payment to the clerk of the judgment, interest, and costs, if it is a money judgment only; or

(3) filing a motion for entry of an order that the judgment has been satisfied.

The court shall hear proofs to determine whether the order should be entered.

The clerk must, in each instance, indicate in the court records that the judgment is satisfied in whole or in part.

[Effective March 1, 1985.]

Comments

1985 Staff Comment

MCR 2.620 is substantially the same as GCR 1963, 524.

RULE 2.621 PROCEEDINGS SUPPLEMENTARY TO JUDGMENT

(A) **Relief Under These Rules.** When a party to a civil action obtains a money judgment, that party may, by motion in that action or by a separate civil action:

(1) obtain the relief formerly obtainable by a creditor's bill;

(2) obtain relief supplementary to judgment under MCL 600.6101-600.6143; and

(3) obtain other relief in aid of execution authorized by statute or court rule.

(B) Pleading.

(1) If the motion or complaint seeks to reach an equitable interest of a debtor, it must be verified, and

(a) state the amount due the creditor on the judgment, over and above all just claims of the debtor by way of setoff or otherwise, and

(b) show that the debtor has equitable interests exceeding \$100 in value.

(2) The judgment creditor may obtain relief under MCL 600.6110, and discovery under subchapter 2.300 of these rules.

(C) Subpoenas and Orders. A subpoena or order to enjoin the transfer of assets pursuant to MCL 600.6119 must be served under MCR 2.105. The subpoena must specify the amount claimed by the judgment creditor. The court shall endorse its approval of the issuance of the subpoena on the original subpoena, which must be filed in the action. The subrule does not apply to subpoenas for ordinary witnesses.

(D) Order Directing Delivery of Property or Money.

(1) When a court orders the payment of money or delivery of personal property to an officer who has possession of the writ of execution, the order may be entered on notice the court deems just, or without notice.

(2) If a receiver has been appointed, or a receivership has been extended to the supplementary proceeding, the order may direct the payment of money or delivery of property to the receiver.

(E) Receivers. When necessary to protect the rights of a judgment creditor, the court may appoint a receiver in a proceeding under subrule (A)(2), pending the determination of the proceeding.

(F) Violation of Injunction. The court may punish for contempt a person who violates the restraining provision of an order or subpoena or, if the person is not the judgment debtor, may enter judgment against the person in the amount of the unpaid portion of the judgment and costs allowed by law or these rules or in the amount of the value of the property transferred, whichever is less.

(G) New Proceeding. If there has been a prior supplementary proceeding with respect to the same judgment against the party, whether the judgment debtor or another person, further proceedings may be commenced against that party only by leave of court. Leave may be granted on ex parte motion of the judgment creditor, but only on a finding by the court, based on affidavit of the judgment creditor or another person having personal knowledge of the facts, other

than the attorney of the judgment creditor. The affidavit must state that

(1) there is reason to believe that the party against whom the proceeding is sought to be commenced has property or income the creditor is entitled to reach, or, if a third party, is indebted to the judgment debtor;

(2) the existence of the property, income, or indebtedness was not known to the judgment creditor during the pendency of a prior supplementary proceeding; and

(3) the additional supplementary proceeding is sought in good faith to discover assets and not to harass the judgment debtor or third party.

(H) Appeal; Procedure; Bonds. A final order entered in a supplementary proceeding may be appealed in the usual manner. The appeal is governed by the provisions of chapter 7 of these rules except as modified by this subrule.

(1) The appellant must give a bond to the effect that he or she will pay all costs and damages that may be awarded against him or her on the appeal. If the appeal is by the judgment creditor, the amount of the bond may not exceed \$200, and subrules (H)(2)-(4) do not apply. If the appeal is by a party other than the judgment creditor, subrules (H)(2)-(4) apply.

(2) If the order appealed from is for the payment of money or the delivery of property, the bond of the appellant must be in an amount at least double the amount of the money or property ordered to be paid or delivered. The bond must be on the condition that if the order appealed from is affirmed in whole or in part the appellant will

(a) pay the amount directed to be paid or deliver the property in as good condition as it is at the time of the appeal, and

(b) pay all damages and costs that may be awarded against the appellant.

(3) If the order appealed from directs the assignment or delivery of papers or documents by the appellant, the papers must be delivered to the clerk of the court in which the proceeding is pending or placed in the hands of an officer or receiver, as the judge who entered the order directs, to await the appeal, subject to the order of the appellate courts.

(4) If the order appealed from directs the sale of real estate of the appellant or delivery of possession by the appellant, the appeal bond must also provide that during the possession of the property by the appellant, or any person holding under the appellant, he or she will not commit or suffer any waste of the property, and that if the order is affirmed he or she will pay the value of the use of the property from the time of appeal until the delivery of possession.

[Effective March 1, 1985.]

Comments

1985 Staff Comment

MCR 2.621 is substantially the same as GCR 1963, 741.

Subrule (C) allows subpoenas and orders under the rule to be served by any of the methods specified in MCR 2.105. Compare GCR 1963, 741.3, which did not allow substituted service under GCR 1963, 105.2.

RULE 2.622 RECEIVERS IN SUPPLEMENTARY PROCEEDINGS**(A) Powers and Duties.**

(1) A receiver of the property of a debtor appointed pursuant to MCL 600.6104(4) has, unless restricted by special order of the court, general power and authority to sue for and collect all the debts, demands, and rents belonging to the debtor, and to compromise and settle those that are unsafe and of doubtful character.

(2) A receiver may sue in the name of the debtor when it is necessary or proper to do so, and may apply for an order directing the tenants of real estate belonging to the debtor, or of which the debtor is entitled to the rents, to pay their rents to the receiver.

(3) A receiver may make leases as may be necessary, for terms not exceeding one year.

(4) A receiver may convert the personal property into money, but may not sell real estate of the debtor without a special order of the court.

(5) A receiver is not allowed the costs of a suit brought by the receiver against an insolvent person from whom the receiver is unable to collect the costs, unless the suit is brought by order of the court or by consent of all persons interested in the funds in the receiver's hands.

(6) A receiver may sell doubtful debts and doubtful claims to personal property at public auction, giving at least 7 days' notice of the time and place of the sale.

(7) A receiver must give security to cover the property of the debtor that may come into the receiver's hands, and must hold the property for the benefit of all creditors who have commenced, or will commence, similar proceedings during the continuance of the receivership.

(8) A receiver may not pay the funds in his or her hands to the parties or to another person without an order of the court.

(9) A receiver may only be discharged from the trust on order of the court.

(B) Notice When Other Action or Proceeding Pending; Appointment.

(1) The court shall ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether another action or motion under MCR 2.621 is pending against the judgment debtor.

(2) If another action or motion under MCR 2.621 is pending and a receiver has not been appointed in that proceeding, notice of the application for the appoint-

ment of a receiver and of all subsequent proceedings respecting the receivership must be given, as directed by the court, to the judgment creditor prosecuting the other action or motion.

(3) If several actions or motions under MCR 2.621 are filed by different creditors against the same debtor, only one receiver may be appointed, unless the first appointment was obtained by fraud or collusion, or the receiver is an improper person to execute the trust.

(4) If another proceeding is commenced after the appointment of a receiver, the same person may be appointed receiver in the subsequent proceeding, and must give further security as the court directs. The receiver must keep a separate account of the property of the debtor acquired since the commencement of the first proceeding, and of the property acquired under the appointment in the later proceeding.

(C) Claim of Adverse Interest in Property.

(1) If a person brought before the court by the judgment creditor under MCR 2.621 claims an interest in the property adverse to the judgment debtor, and a receiver has been appointed, the interest may be recovered only in an action by the receiver.

(2) The court may by order forbid a transfer or other disposition of the interest until the receiver has sufficient opportunity to commence the action.

(3) The receiver may bring an action only at the request of the judgment creditor and at the judgment creditor's expense in case of failure. The receiver may require reasonable security against all costs before commencing the action.

(D) Expenses in Certain Cases. When there are no funds in the hands of the receiver at the termination of the receivership, the court, on application of the receiver, may set the receiver's compensation and the fees of the receiver's attorney for the services rendered, and may direct the party who moved for the appointment of the receiver to pay these sums in addition to the necessary expenditures of the receiver. If more than one creditor sought the appointment of a receiver, the court may allocate the costs among them. [Effective March 1, 1985.]

Comments

1985 Staff Comment

MCR 2.622 is substantially the same as GCR 1963, 742.

Subrule (D) adds language expressly authorizing the court to allocate expenses among multiple creditors.

RULE 2.625 TAXATION OF COSTS**(A) Right to Costs.**

(1) *In General.* Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.