

STATE OF NEW YORK
SUPREME COURT COUNTY OF JEFFERSON

JOHN L. YEHLE,

Petitioner,

v.

JON T. RICH, JR.,

Respondent.

**AFFIRMATION IN SUPPORT
OF CROSS-MOTION TO
VACATE STIPULATED
ORDER AND IN
OPPOSITION TO THE
MOTION FOR
APPOINTMENT OF A
RECEIVER**

Index No. 2015-1321
RJI No. 22-15-0572

Assigned Justice:
Hon. James P. McClusky, J.S.C.

Robert J. Slye, under penalties of perjury, affirms:

1. I am an attorney at law, duly admitted to practice in the State of New York, and a shareholder in Slye Law Offices, P.C., attorneys for Petitioner in this matter, John L. Yehle. I am fully familiar with the facts and circumstances of this proceeding.

2. The Court has before it a motion to appoint a receiver of the parties' limited liability company, Wellesley Island Storage, LLC ("WIS") "due to Petitioner's frustration and blatant disregard of this Court's stipulated Order dissolving the WIS and directing auction of WIS's assets." See Attorney Rose's Affirmation at paragraph 2.

3. I am well aware of the stipulation directing the sale of this property, which was signed by Your Honor on November 20, 2018. This is why the cross-motion seeks to vacate it, because it was procured by apparent material misrepresentations of fact by Respondent.

4. For example, on October 15, 2018, five weeks prior to the stipulation, I served a Notice for Discovery and Inspection for certain records of Mr. Rich, all of which were related to the claimed expenses in the construction of the LLC's facilities by Jon T. Rich Construction Co., LLC ("JTRC") of which Respondent is the principal. A copy of the Notice for Discovery and Inspection, including the Affidavit of Service of the same, is attached as Exhibit "A".

5. I was directly involved in telephone conversations with Bernie Brzostek concerning the sale of the property. Mr. Brzostek has examined the property, and is, upon information and belief, aware of what needs to be sold.

6. While there has been ongoing correspondence between Attorney Rose and me concerning the Brzostek auction, the demand for discovery and inspection elicited no response. Attorney Rose clearly knew that I was awaiting a response to the Notice for Discovery and Inspection at the same time he was attempting to obtain a scheduling of the sale. This was made clear by our motion made returnable on February 21, 2019 seeking an order to compel Respondent's response to our demands for discovery.

7. On March 26, 2019, Your Honor granted our Motion to Compel Respondent's response within 45 days after service of the Order with Notice of Entry. A copy the Order together with the Notice of Entry dated April 2, 2019, is attached as Exhibit "B".

8. On April 23, 2019, Respondent responded to the Notice for Discovery and Inspection.

9. Respondent's answers to the Notice reveal that he is not in possession of the documents of JTRC which support that company's claims for labor hours performed;

equipment hours; proof of certain purchases by JTRC; and invoices for the substantial payments to JTRC (totaling \$178,000.00) made to JTRC by Mr. Rich while he controlled the WIS checkbook.

10. According to the accompanying Affidavit of Nicole M. Teska, CPA, CFE, absent production of those documents, the claims based upon those documents cannot be proven. Indeed, Ms. Teska had been retained by my office to conduct a forensic accounting of Mr. Rich's claims in this proceeding, because it was suspected that Mr. Rich's claims might not be correct.

11. During the course of Mr. Rich's Examination Before Trial, conducted on March 15, 2017, he claimed that a total of \$621,786.21 had been obligated by WIS in constructing its storage facilities. See a portion of the transcript of Mr. Rich's testimony taken on March 15, 2017 at page 63, attached as Exhibit "C". That testimony makes reference to deposition Exhibit L, a copy of which is attached to this Affirmation as Exhibit "D". It should be noted that Mr. Rich's claimed amounts include overhead and profit for JTRC, even though Mr. Rich then claims another 1/2 of that amount as a personal capital contribution to the company.

12. Thus, Mr. Rich's claim, at the time of the Examination Before Trial, was that he is entitled to claim a personal contribution to the company of over \$310,000.00.

13. Petitioner's Notice for Discovery and Inspection sought to obtain proof of JTRC's work, seeking proof by time cards, foreman reports, and paystubs related to the claims for straight time and overtime for its employees. The demand also requested foreman reports to support the equipment hours of JTRC. Those items were detailed in Appendix A, B, C and D to the Notice for Discovery and Inspection, all of which were provided to me by Ms. Teska as necessary to conduct her forensic audit.

14. According to Ms. Teska:

- a. Absent invoices, JTRC's claims at Appendix D (\$55,243.07) cannot be allowed;
- b. Absent proof of the items at Appendix A and Appendix C, JTRC's claims for straight time and overtime, totaling over \$72,000.00, cannot be allowed; and
- c. Absent the foreman's reports reflecting when equipment was on site, (which included time for the person operating it), over \$113,000.00 of JTRC's claims cannot be proven.

15. Again, at a time when Mr. Rich was handling the WIS checkbook, he paid over \$178,000.00 to his corporation. See pages 26-27 of his Examination Before Trial, discussing that examination's Exhibit F, a copy of which is attached hereto as Exhibit "E". Copies of JTRC's invoices to WIS were not provided in response to the Notice for Discovery and Inspection, and I am informed do not form a part of WLS' records.

16. Respondent has pushed Petitioner forward to sell WIS property based upon the premise that he is entitled to a credit, after the sale, of 1/2 of \$621,786.00. The figure before JTRC's overhead or profit calculation, as shown on Exhibit "D", is \$503,544.00. Respondent cannot now prove over \$240,000.00 of JTRC's claimed input to the project, thereby reducing the total provable project cost (in cash, not preliminary contributions of property, etc.) to roughly \$264,000.00. If Mr. Rich claims 1/2 of that amount (\$132,000.00) as his contribution, that figure should be contrasted with the provable cash contribution by Mr. Yehle (admitted by

Mr. Rich) in the amount of \$271,000.00. See pages 31-32 and page 45 of Mr. Rich's deposition, attached as Exhibit "F".

17. So how does this affect the sale? The relative contributions of the parties is extremely important to them in any decision of how to bid on the property at auction, if at all. In this regard, Mr. Yehle knows exactly how much money he has contributed to the project, but has no real idea of the extent of Mr. Rich's contribution, as it is not provable. Until the receipt of Mr. Rich's responses to the disclosure demands, which were served on Mr. Rich's attorneys one month prior to the stipulation, but not received until just last month, the relative positions of the parties was unknown.

18. Now that Petitioner knows that Respondent's numbers cannot apparently pass the scrutiny of an audit of JTRC's records, it is clear that the stipulation calling for the sale, in advance of knowing their relative positions, was inappropriate.

19. It is respectfully submitted that the sale should abide a hearing in connection with the members' relative contributions, and such the stipulation and order should either be vacated or amended to reflect this new reality.

APPOINTMENT OF A RECEIVER

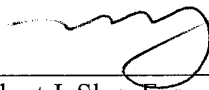
20. The underlying motion seeks the appointment of a receiver.

21. There is no allegation in the moving papers that Mr. Yehle has done anything other than been a good steward of the property; accounted for all rents; has, and stands ready to operate Wellesley Island Storage up to, through, and after the sale.

22. The appointment of a receiver does nothing to bring value to the company; does nothing to make any of the matters any easier; and does nothing but cost money, which neither party can afford.

WHEREFORE, your affirmant respectfully requests an order of this Court vacating the stipulation and order of the parties concerning the sale or otherwise amending that order by requiring a hearing on the relative position of the parties prior to auction, together with an order of this Court denying Respondent's motion for an appointment of a receiver, together with such other and further relief as the Court deems just and proper.

Dated: May 22, 2019



Robert J. Slye, Esq.