

SCAN

At an I.A.S. Part 7 of the Supreme Court of the State of New York, County of Nassau, at the Courthouse located at 100 Supreme Court Drive, Mineola, New York 11501 on this 29 day of ~~January~~ Feb. 2012.

**PRESENT:**

Honorable Anthony F. Marano,  
J.S.C.

-----X  
WINIFRED Q. CLARK, individually and on behalf of  
Trust U/W/O William P. Clark,

Index No. 5514/2008  
(Action No. 1)

Plaintiff,  
-against-

JAMES CLARK, JR.,  
Defendant.

-----X  
WINIFRED Q. CLARK,

Index No. 19481/2009  
(Action No. 2)

Plaintiff,  
-against-

JAMES CLARK, JR.,  
Defendant.

-----X  
JAMES P. CLARK, JR.,

Index No 5941/2010  
(Action No. 3)

Plaintiff,  
-against-

WINIFRED Q. CLARK and RICHARD QUINN,  
Defendants.

-----X

**ORDER APPOINTING RECEIVER**

Upon the Order to Show Cause signed by Honorable Ira B. Warshawsky on October 21, 2011 seeking the appointment of a receiver over certain income-producing properties, and the Affirmation of Ronald J. Rosenberg dated October 20, 2011, the Affidavit of David S. Marcus sworn to October 11, 2011, and the Affidavit of Winifred Q. Clark sworn to October 3, 2011 in support thereof and

the exhibits annexed thereto; said Order to Show Cause being opposed by the Affidavit of James P. Clark Jr. sworn to November 7, 2011, the Affidavit of James P. Clark sworn to November 3, 2011, and the exhibits annexed thereto opposing the motion; and reply papers having been filed in further support of the motion being the Reply Affirmation of Ronald J. Rosenberg dated November 14, 2011, the Reply Affidavit of David S. Marcus sworn to November 14, 2011 and the exhibits annexed thereto; and the Court having issued an Order dated December 20, 2011 granting the motion for a receiver effective January 27, 2012;

NOW, on motion of Rosenberg Calica & Birney LLP, attorneys for the plaintiff Winifred Q. Clark, it is

*DM* ORDERED that Steven R. Schlessinger (FID # 211970) with offices at 300 Garden City Plaza  
Garden City NY 11530, is hereby appointed Receiver with the usual powers and

direction as Receiver for the benefit of the parties of all rents, revenues, and profits due and to become due during the pendency of this action issuing out of the following 28 jointly-owned properties:

1. 323-5 Nassau Ave, Brooklyn
2. 127 Nassau Ave, Brooklyn
3. 494/496 Morgan Ave, Brooklyn
4. 105/111 Lombardy St., Brooklyn
5. 113/115 Lombardy St., Brooklyn
6. 333/335 Nassau Ave., Brooklyn
7. 245/251 Freeman St., Brooklyn
8. 470 Manhattan Ave., Brooklyn
9. 361 Troutman Ave., Brooklyn
10. 481/487 Graham Ave., Brooklyn
11. 488/494 Leonard St., Brooklyn
12. 59-01 54<sup>th</sup> Street, Queens
13. 58-11/15 57<sup>th</sup> Drive, Queens
14. 58-21 57<sup>th</sup> Drive, Queens
15. 58-25 57<sup>th</sup> Drive, Queens

16. 58-16 57<sup>th</sup> Road, Queens
17. 57-69 58<sup>th</sup> Place, Queens
18. 58-99 54<sup>th</sup> Street, Queens
19. 58-88 56 Street, Queens
20. 56-37 59<sup>th</sup> St., Queens
21. 58-70 57<sup>th</sup> Road, Queens
22. 56-60 59<sup>th</sup> St., Queens
23. 57-14 59<sup>th</sup> St., Queens
24. 57-18 59<sup>th</sup> Street, Queens
25. 57-52 58<sup>th</sup> Street, Queens
26. 58-100 56<sup>th</sup> Street, Queens
27. 59-02 55<sup>th</sup> Street, Queens
28. 58-66/68 57<sup>th</sup> Road, Queens

(the "Jointly-Owned Properties") and it is further

**ORDERED**, that by accepting this appointment the Receiver certifies that (s)he is in compliance with Part 36 Rules of the Chief Judge (22 N.Y.C.R.R. Part 36), including but not limited to, Section 36.2(c)("Disqualification from appointment") and Section 36.2(d)("Limitations on appointments based upon compensation"); and it is further

**ORDERED** that payment of the Receiver's fees shall be determined upon written application to this Court; and it is further

**ORDERED** that the Receiver is authorized to forthwith take charge and enter into possession of the Jointly-Owned Properties; and it is further

**ORDERED** that before commencing with his duties as Receiver, said Receiver shall file with the Clerk of this Court an Oath and a bond or undertaking with sufficient sureties thereon subject to the approval of this Court in the amount of \$ 600,000.00, conditioned for the faithful performance of his duties as Receiver; and it is further

**ORDERED** that said Receiver be and hereby is directed to demand, collect and receive from occupants, tenants, and licensees in possession of the Jointly-Owned Properties or others liable

therefore, all the rents and fees thereof to become fixed and now due and unpaid, and hereafter to become due and that said Receiver be and hereby is authorized to institute and carry on all legal proceedings necessary for the protection of the Jointly-Owned Properties or to recover possession of the whole, or any part thereof, to fix reasonable rental value and license fees to compel the tenants, licensees, and occupant(s) to attorn to the Receiver, and to institute and prosecute suits for the collection of rents, revenues now due or hereafter to become due, and summary proceedings for the removal of any tenant or tenants or other persons therefrom; and it is further

**ORDERED** that said Receiver is hereby authorized to lease any part of the Jointly-Owned Properties for terms not exceeding one year, upon notice to the Court, and to the extent sufficient rent and revenues are collected: (a) to maintain all necessary insurance for the Jointly-Owned Properties, including but not limited to insurance against casualty, fire loss, public liability, Worker's Compensation, etc.; (b) to keep the Jointly-Owned Properties in proper repair; (c) to pay taxes, including past due taxes, municipal assessments, and water and sewer charges due thereon; (d) to pay all ordinary and necessary recurring and non-recurring costs of operating the Jointly-Owned Properties; and (e) to comply with all legal requirements of any governmental entity having jurisdiction over the Jointly-Owned Properties; and (f) otherwise to do all things necessary for the due care and proper management of the Jointly-Owned Properties; and it is further

**ORDERED** that the Receiver is hereby authorized to employ a managing agent, premises manager, and/or leasing agent to assist him in carrying out the aforesaid duties, on notice to the Court and the parties' attorneys; and it is further;

**ORDERED** that pursuant to the provisions of the General Obligations Law Section 7-105, anyone holding any deposits or advances of rent as security under any lease or license agreement

affecting the Jointly-Owned Properties shall turn such security over to said Receiver within five (5) days after Receiver shall have qualified; and thereupon the said Receiver shall hold such security subject to such disposition thereof as shall be provided in an order of this Court to be made and entered in this action; and it is further

**ORDERED** that anyone in possession of same shall turn over to said Receiver forthwith all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental spaces or facilities in the Jointly-Owned Properties; and it is further

**ORDERED** that the defendant JAMES P. CLARK JR, his agents, servants, and employees, or any party in possession thereof, shall, within ten (10) days of service of this Order, deliver to the Receiver any and all papers and other things affecting the rental or other operation of the Jointly-Owned Properties or any part or parts thereof that they may have in their possession or that are in the possession of their agents, including but not limited to, the following: (a) all keys and electronic codes to entrance doors, storage and boiler rooms, etc. of all Jointly-Owned Properties; (b) all leases, rental agreements, room agreements or amendments thereto in effect for the tenants and/or occupants and equipment at the Jointly-Owned Properties; (c) copies of all current rent rolls, ledgers, and tenancy lists relating to the Jointly-Owned Properties; (d) a payment history for the last ~~five (5)~~ years, for all current or prior tenants/occupants of the Jointly-Owned Properties; (e) a reconciliation of all security deposits and accounts, and a list setting forth each account number and the name of the depository wherein each account is maintained; (f) copies of all current financial statements, including, but not limited to, all documentation concerning delinquent tenants at the Jointly-Owned Properties; (g) all documents containing references to all utility accounts including, but not limited to, electricity, gas, heat, water and telephone service; (h) the names and account numbers of all utility

companies servicing the Jointly-Owned Properties; (i) copies of all insurance policies in effect for the Jointly-Owned Properties and any part thereof; (j) copies of all contracts relating in any way to the Jointly-Owned Properties including, but not limited to, contracts with vendors or other service personnel; (k) a list of suppliers and copies of all contracts currently in force, including service and vendor contracts; (l) an employee roster and payroll information; (m) a list of any proceedings that are currently, or were within the past ~~three~~ years, before any court or arbiter regarding or relating to leases or any agreements relating to the Jointly-Owned Properties, and copies of the entire litigation file pertaining to such proceedings; (n) copies of any court stipulations for payment for rent or arrearages; (o) an equipment and inventory list; and (p) such other items, records, or documents that the Receiver may reasonably require to lease, rent, manage and maintain the Jointly-Owned Properties; and it is further;

**ORDERED**, that notwithstanding anything to the contrary contained in this Order, the Receiver shall not, without notice to the Court, and prior notice to the parties' attorneys, make improvements or substantial repairs to the property at a cost in excess of \$1,000; and it is further

**ORDERED**, that the Receiver, upon receipt of any rents, revenue, profits or issues from the Jointly-Owned Properties, shall promptly deposit the same in Flushing Bank 1122 Franklin Ave Garden City NY, in an interest-bearing account in his name as Receiver, and such account shall show the name of this case, and the depository bank designated herein shall furnish monthly account statements to the Court and the parties' attorneys; and it is further

**ORDERED**, that the tenants, subtenants, or other persons in possession of said Jointly-Owned Properties attom to said Receiver and pay over to said Receiver all rents, license fees and other charges or other monies from said Jointly-Owned Properties now due and unpaid or that

may hereafter become due; and that Defendant James P. Clark Jr., and his agents, officers, employees, attorneys and/or assigns are enjoined and restrained from: (i) collecting the rents, license fees and other charges of said Jointly-Owned Properties; (ii) interfering in any manner with the Jointly-Owned Properties or its possession, or with the Receiver's management thereof; (iii) and from transferring, removing, or in any way disturbing any of the occupants or employees; and that all the tenants of the Jointly-Owned Properties and other persons liable for the rents be and they hereby are enjoined and restrained from paying any rents for said Jointly-Owned Properties to Defendant James P. Clark Jr., his agents, officers, employees, attorneys and/or assigns; and it is further

**ORDERED**, that all persons now or hereafter in possession of the Jointly-Owned Properties or any part thereof, and not holding such possession under valid and existing leases, do forthwith surrender such possession to the Receiver at the option of the Receiver, if any; and it is further

**ORDERED**, that Defendant James P. Clark, Jr. turn over to the Receiver all rents collected from and after the date of this Order; and it is further

**ORDERED**, that the Receiver appointed herein shall file a monthly accounting from the date of this Order, and each and every month thereafter during the pendency and existence of this receivership, with copies of said accounting to be forwarded to the parties' attorneys; and it is further

~~**ORDERED** that the Receiver, after paying the expenses of the management and care of said Jointly-Owned Properties, shall pay to the plaintiff Winifred Q. Clark the sum of \$30,000 each month on account of the sums due to her from the 28 Jointly-Owned Properties; and shall pay to the defendant James P. Clark, Jr. the same \$30,000 each month on account of the sums due to him from the 28 Jointly-Owned Properties, subject to sufficient funds being available to the Receiver and~~

~~subject to final adjustment as determined by the Court at the conclusion of this action and/or until further order of this Court ; and it is further~~

*CEM*

~~ORDERED that the Receiver, after reviewing the bank statements and other financial records for the existing business banking accounts, and after establishing a reserve of \$250,000, shall calculate the amount of money available for distribution to the parties and shall distribute the excess monies equally to Winifred Q. Clark and James P. Clark, Jr. on or before March 1, 2012; and it is further~~

*AM*

*AM*

ORDERED, that the appointee named herein shall comply with Section 35a of the Judiciary Law, CPLR Sections 6401-6404, RPAPL Section 1325, and Part 36 Rules of the Chief Judge; and it is further

ORDERED, that the said Receiver or any party hereto may at any time, on proper notice to all parties who have appeared in this action, apply to this Court for an order or for instructions or powers necessary to enable such Receiver to properly and faithfully perform his/her duties; and it is further

ORDERED, that the Receiver appointed herein shall continue in his or her duties as such until the Receivership is terminated by court order.

ENTER:

*Anthony F. Marano*  
ANTHONY F. MARANO, J.S.C.

**ENTERED**  
MAR 20 2012  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE



ENTERED  
IN  
COMPUTER

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**

**HON. IRA B. WARSHAWSKY,  
Justice.**

WINIFRED CLARK, Individually, and on behalf of  
Trust U/W/O WILLIAM P. CLARK,

Plaintiff,

-against-

JAMES CLARK, JR.,

Defendant.

WINIFRED CLARK,

Plaintiff,

-against-

JAMES CLARK, JR.,

Defendant.

JAMES P. CLARK, JR.,

Plaintiff,

-against-

WINIFRED Q. CLARK and RICHARD QUINN,

Defendants.

**TRIAL/IAS PART 7**

Action No. 1

INDEX NO.: 005514/2008  
MOTION DATE: 11/15/2011  
MOTION SEQUENCE: 11

**FOR THE APPOINTMENT  
OF A RECEIVER**

Action No. 2

INDEX NO.: 019481/2009

Action No. 3

INDEX NO.: 005941/2010

The following documents were read on these motions:

Motion by Winifred Clark for the Appointment of a Receiver .....	1
Memorandum of Law in Support of Motion .....	2
Affidavit in Opposition to Motion .....	3
Memorandum of Law in Support of Opposition .....	4
Exhibits to James P. Clark Jr.'s Opposition .....	5
Brief for Defendant - Appellant Respondent / Defendant - Appellant/Plaintiff Appellant - Respondent, James Clark, Jr. Answering and Reply Brief for James Clark, Jr. [from pending appeal] .....	6
Reply Affirmation of Ronald Rosenberg .....	7

Winifred Clark, plaintiff in action numbers one and two and defendant in action number three has moved for the appointment of a receiver for the properties that she and James P. Clark, Jr. Jointly own, (28 properties) as well as properties to which she disputes ownership (3) and a third property, pursuant to CPLR§6401. The original complaint is a partition action, calling for an accounting and claiming a breach of fiduciary duty.

Section 6401 requires the movant to prove, by clear and convincing evidence that “there is a danger that the property will be removed from the state, or lost, materially injured or destroyed.”

“The appointment of a temporary receiver is a an extreme remedy resulting in the taking and withholding of property from a party without the benefit of a trial on the merits.” (Modern Collection Association , Inc. v. Capital Group Inc., 140 AD2d 594 [2d Dept 1988].

Clearly the appointment of a receiver would be a harsh remedy and should not be lightly exercised by the court, unless the movant has shown by clear and convincing evidence that there is a danger of irreparable loss and that a receiver is required to protect the parties interests ( Secured Capital Corp. Of NY v. Dansher, 263 Ad2d 503, 504 [2d Dept 1999] (See also Carmody Wait, NY Practice, Vol 14 at 641].

It is also generally held that where the value of a subject real estate provides security to the party seeking a receivership then the appointment of a receiver would not be appropriate.

(See *Kristensen v. Charleston Square Inc.*, 273 AD2d 312 [2d Dept 2000]; a judicial dissolution proceeding).

In other words where the claims of financial defalcation could be secured by the adverse party's interest in the property it is argued it would not be appropriate to appoint a receiver.

## DISCUSSION

As background Winifred Clark is widow of William Clark. All interests she has in the properties flow through her late husband.

James P. Clark, Jr. and William Clark obtained their interest in properties from their father and uncle. They also purchased other properties on their own.

The brothers treated the properties in a rather unusual fashion for tax purposes. One brother would claim and pay taxes on 50% of the properties as though he was 100% owner and his brother did the same. Apparently James has managed the properties, at last from the time of William's passing, on his own; and again apparently without compensation. In recent years he has been assisted by Winifred's son, also James P. Clark.

The court had previously attempted to settle the matter and then referred it to mediation. All efforts have met with failure.

Winifred sets forth numerous arguments to support her request along with an affidavit, by David Marcus an accountant who examined books and records given him by Winifred's counsel including two items entitled "rent roll" and "general ledger."

### 1. Rental Income:

Winifred alleges that her share of rents should be at minimum \$30,000 per month not including a share of disputed properties. She is paid \$15,000 per month. She alleges the additional monies due her are deposited by James in diverse accounts secreting the profits from her. Her position is supported by the affidavit of her forensic accountant, David Marcus.

How James determines what Winifred should be paid monthly is unclear. What he deducts from the rent roll has not been set forth in this motion. Giving credence to the Marcus

affidavit he is not paying Winifred for her share. Whatever that might be.

James offers no evidence of any kind on this issue but claims Mr. Marcus is "incorrect."

## 2. Financial Impropriety:

Winifred points out, and it is not disputed, that James keeps two (2) sets of books on the properties (Rent Roll and General Ledger). The rent roll reflects all rents received but the general ledger does not. She argues that this is purposeful to under report income. This has resulted, so argues her counsel, in hundreds of thousands of dollars of unreported income impacting on her distributions, so she believes. Defendant does not comment on this in his opposition.<sup>1</sup>

## 3. Under reporting Income:

Winifred argues that James has admitted under reporting rental income by reducing actual income by fabricating expenses such as broker commissions and repairs to decrease profit. (Between 1994 - 2008). It is alleged this may rise to the million dollar level. The basis of this is inferred from a small part of his deposition, which his counsel refers to as a "quip."

## 4. Leases:

Winifred's counsel argues that James has leased numerous properties for below market value, fails to actually enter into leases resulting in month to month tenancy's and few renewals. Twenty of 32 buildings do not have leases.

Therefore this results in less income to Winifred and reducing - she argues - the appraised value of the individual properties. Properties with leases being more valuable than

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<sup>1</sup>The general argument of defendant is a claim of bookkeeping errors or oversight. There is a total of \$1,064,384 in rent discrepancies, of which apparently \$280,000 was received but not recorded in either the rent roll or general ledger. There is no explanation of how James determined what rent was received for varying periods for various buildings going back to 1994, in that there was a lack of entries in either book to support it.

those without. Thus she argues she needs a receiver to take over management to prevent further decrease in building value.

James' counsel argues that most of the properties are in the Greenpoint area and we don't understand how hard it is to keep tenants in these places much less tenants with leases. No expert of any nature has been proffered to support counsel's position. Whether the court is to accept this argument or not, the papers reflect the buildings are occupied and for the most part rent is collected.

#### 5. Commingling of Funds:

Winifred alleges James co-mingled rental income and paid expenses on his separate property from the funds. It is not denied by James that some expenses on his property were paid from such funds, however, he argues that he repaid those amounts; which is not disputed by Winifred.

#### 6. Defendant James P. Clark, Jr. Fails to Maintain Accurate Business Records

To say that obtaining discovery from James Clark as to the records he kept for the properties was difficult is to put it mildly. Discovery has come in dribs and drabs as he apparently found it in his office. The picture painted to the court of the office he occupies is only missing an eyeshade, a bottle of ink and a quill.

However that is not Winifred's fault. (Winifred did work in the office for a period of time so she had some familiarity with it).

He consistently failed to produce normal records such as bank records, check books or leases; and what was produced had inconsistencies. There appears to be no consistency in the fashion in which he maintains the records.

She argues that this has and will impair her ability to obtain full records and an accounting.

#### 7. Defendant Deposits Rent Checks in a Variety of Accounts and Writes Check from a Variety of Accounts.

The discovery process and deposition of James Clark supports the claim. This does not appear to be disputed. Once again, not good business management and may make it hard (and expensive) to conduct an accounting in the future.

8. Defendant has failed to pay Taxes resulting in Tax Liens placed on one or more Buildings (including notice of tax sale auction).

It is not argued that these above did occur. However this appears not to have been an intentional act on his part not to pay, and, at least on one occasion he lumped tax payments into one check which resulted in a mis application of the payment by NYC. However, this explanation is not sufficient to explain the "90 day notices to sell Tax Liens" date in February 2008 for four properties, specifically 56-60 59<sup>th</sup> Street (Block 2669, Lot 64), 59-02 55<sup>th</sup> Street (Block 2629, Lot 10), and 243 Freeman Street (Block 2506, Lot 49) and 57-18 59<sup>th</sup> Street (Block 2674, Lot 11).

These liens were sold ( see Ex.U to moving papers) and tax lien foreclosure proceedings were started in 2010 (Ex. T) for 57-18 59<sup>th</sup> Street and 56-60 59<sup>th</sup> Street.

For a tax lien to get to this late stage - sale - numerous notices that were apparently sent to James had to have been ignored.

A similar scenario existed with tax lien notices for property at 58-99 5<sup>th</sup> Street, 59-02 55<sup>th</sup> Street; + 58-70 57<sup>th</sup> Street. (Placed on "Tax Lien List").

These tax payment failures cannot be merely attributed to his bunching together payments for three properties or one check. A method that a wise property manager would not take for fear of confusion by NYC taxing authorities. They are examples of a systemic failure to properly manage the properties and pay taxes timely, threatening the loss of the properties. This again argues plaintiff, supports the appointment of a receiver.

Despite argument by James that the liens were in error and the taxes had been paid. Winifred points out that counsel had to be retained to defend the actions. For then such an action or inaction by James reflects his inability to manage the property and supports the appointment of a receiver.

Counsel for James Clark has disputed the factual accuracy of some of Winifred's arguments and argues that Winifred's counsel "opines" without evidentiary proof. He points out that if the court was to accept all of David Marcus's affidavit, despite its weaknesses, it would indicate that James has withheld or misappropriates between 1.8 and 3.1 million dollars.

Fourteen of the properties alone and out of 32, according to Winifred, one valued at over 5 million dollars. That combined with the fact that James owns eight properties on his own (so argues his lawyer) would clearly indicate that Winifred is well secured by the value of the commercial properties within her grasp pursuant to a future court order.

James' counsel also argues that Winifred has shown bad faith (Along with her counsel) in not producing documents supporting her claim for an accounting, which caused the mediation to fail. Her counsel on the other hand blames him for the failure of the mediation.

James counsel also points to Winifred's action in executing three deeds in effort to convey to herself ownership (partial) in 3 properties solely owned by James.

There is ample blame to go around when looking for a reason behind the failure of the mediation. The court will not explore that issue.

Winifred's counsel strongly states that she has more than satisfied the requirements of CPLR 6401 (a) and is entitled to the appointment of a receiver to protect her rights in these income-producing rental properties and to ensure that she receives her 50% share of the net profits of the buildings' (citing to *Singh v. Brunswick Hosp.*, 2 AD3d 433) [2d Dept. 2003]

No one can disagree on the standard as set forth in CPLR§ 6401 (a). That the court has the discretion to appoint a temporary receiver of the property upon application of a party with apparent interest in the property "where there is danger that the property will be.... lost, materially injured or destroyed."

In the instant case Winifred Clark is a tenant in common <sup>2</sup> with James P. Clark, Jr. in numerous properties and contests ownership in others. Clearly she meets the test of a person with

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<sup>2</sup> They are not shareholders, partners or anything but tenants in common

“apparent interest in the property.”

There are numerous cases cited by both sides which have both supported the appointment of a temporary receiver and also denied such a request. It is a fact sensitive question.

Here we have over 40 properties that could require a receiver and eventually a property manager if the court grants Winifred’s motion. The court cannot imagine the cost, but using a simplistic 5% number for the receiver and multiplying by the monthly net rent (court not aware of gross rent) according to Mr. Marcus’ report, it would cost over \$12,000 per year at a minimum.

If these properties are truly at risk of being lost, materially injured or destroyed” this would be a small price to pay.

To Review:

1. Rental Income -

Accepting Mr. Marcus’s report on rental income Winifred is not receiving her fair share of the rental income. However this is an issue to be determined after an accounting and an eventual ruling by the court (if needed). It is not on its own, a reason to support a receiver.

2. Financial Impropriety and 3. Under reporting Income -

James Clark keeps two sets of books for the properties which do not smoothly interface (to be kind). This may result in serious income tax problems but it is not a sufficient basis for the appointment of a receiver if it was the only issue before the court.

4. Leases-

James has leases on some of the properties but not all (12 of 32 have leases). Some are month to month tenancies which at one time had leases. The excuse is that we, anyone but James, doesn’t understand the neighborhoods where these buildings are located.

These grounds alone may support the appointment of a receiver because they reduce the value of the proeprties.



5. Commingling of Funds and 6. Failing to Keep Accurate Building Records -

The mixing of income from the properties does not support the appointment of a receiver. Though it is not the most advisable book keeping method it has allegedly worked for James P. Clark, Jr. It does not work for Winifred, and upon close examination it creates a tangled web extremely difficult to resolve.

If Winifred believes James has literally stolen from her, she is free to go to the DA's office with her complaint.

His failure to keep better records is clearly a negative, however, once again, it does not on its own support her application for a receiver.

7. Deposition of Rent Checks in Multiple Accounts -

Again not a good practice which should be corrected but not one on its own that would cause the court to appoint a receiver.

8. Tax Liens -

The evidence presented indicates a number of times a payment was missed which resulted in tax problems on certain properties. These have been cleared. The explanation given for how the liens came about is not clear.

Though tax liens and/or eventual auction could clearly result in the loss of a property. What led to this problem we are led to believe appears to have been an exception to the manner in which James has managed the properties, paid the tax and handled the repairs over many years.

James P. Clark, Jr. is an octogenarian. He manages these numerous properties as though he was in the mid 20<sup>th</sup> Century it has not yet brought about the loss of a property nor materially injured any of the properties. (Exclusive of reduction in value due to lack of leases)

However when you combine all his actions, tax payment defaults, under reporting income, double books, failure to pay Winifred her fair share of income, misuse of joint income for personal needs and essentially an object failure to clearly explain most of the above, the appointment of a receiver now seems to be most appropriate and is supported by clear and

convincing evidence.

The court is loathe to appoint a receiver in most cases. I have done so only rarely in my entire tenure on the bench. I pull back from such appointments for many reasons including the loss of income to the parties.

It is clear that of the parties had taken advantage of the courts efforts of settlement or those of the mediator this motion would not have been made. Therefore the court rules as follows:

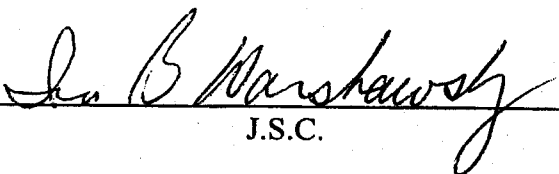
The court orders the appointment of a receiver for the 28 properties in which that parties are tenants in common (each a 50% owner). Said appointment shall be effective January 27, 2012.

The receiver shall be named by my successor in this part.

If the parties enter into an agreement dividing the 28 properties on or before that date, by themselves or with the assistance of the court appointed mediator, Jeffrey Miller, Esq., the order appointing the receiver will be vacated.

This constitutes the decision and order of the court.

Dated: December 20, 2011

  
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J.S.C.