

FILED/ENDORSED
JUL 21 2015
By: M. CHAPMAN
DEPUTY CLERK

1 JOHN Z BARR
Receiver
2 883 Meadowridge Dr
Fairfield, CA 94534
3 Telephone: (415) 846-0547
jbarr@staresources.net
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SACRAMENTO
9

10 WESTAMERICA BANK,
11 Plaintiff,
12 v.
13 MARK J. BIXBY, individually and as trustee of
14 The MARK J. BIXBY 1996 REVOCABLE
15 LIVING TRUST, and DOES 1 through 50,
16 Inclusive,
Defendants.

CASE NO. 34-2015-00175119
RECEIVER'S FIRST INTERIM REPORT

FILED BY FAX

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19 Background

20 On June 18, 2015 Westamerica Bank (Plaintiff) filed its Ex Parte Order to appoint a
21 Receiver and for Preliminary Injunction vs. Defendants Mark J. Bixby, individually and as trustee of
22 the Mark J. Bixby 1996 Revocable Living Trust. It was ordered that John Z. Barr (the "Receiver")
23 shall be appointed as receiver to take possession, custody and control of the certain real property
24 commonly known as 5852 88th Street, Sacramento, California (APN 062-0080-037), together with
25 all existing or subsequently erected or affixed buildings, improvements and fixtures and easements,
26 rights of way, and appurtenances, and all other rights, rents, royalties and profits relating thereto and
27 certain personal property including, without limitation insurance proceeds, all as more fully set forth
28

1 in the Deed of Trust and Assignment of Rents entered into between Westamerica and Defendants,
2 and to engage in and take those actions as further described in the Order.

3 Pursuant to the Order, the Receiver filed his bond with the Court in the amount of \$10,000.

4 Estate Assets

5 The assets of the estate consist of a single story light industrial warehouse separated in to
6 separate units for tenancy. The entire building is approximately 90,000 sq ft and has 8 occupied
7 tenants consisting of approximately 76,800 sq ft. There are no loading docks and many of the units
8 do have restroom facilities. There, reportedly, was considerable fire damage to several units in the
9 building.

10 Status of Assets on Takeover

11 Upon entry of the Order, the Receiver contacted Plaintiff's counsel to gather all
12 information necessary to harbor and manage the Receivership Estate ("Estate"). All parties were
13 requested to provide information necessary to properly administer the Estate as set forth in the
14 Order. Leases were obtained; however, keys were not nor any other information regarding
15 arrangements with tenants or utility companies or maintenance.

16 Immediate action was taken to inspect the premises and assets. On June 25, 2015, the Receiver
17 contracted with an inspector and contractor to deliver letters to each tenant informing them of the
18 changes and that the Receiver was responsible for collecting the rents and handling all affairs. On
19 that day, the building was inspected initially as to the fire burned area of the tenant space at Unit
20 750. The space is currently stripped to the wood studs at the west wall and to the metal studs on both
21 sides on the demising wall to the north. There are no interior offices, finishes or floor finishes in
22 place. There is extensive smoke damage and soot at the ceiling and walls. There are two mobile
23 offices and a trailer stored in the units. Obvious damage to the sprinklers and electrical services were
24 noted. There was a wood patch of roughly 100 square feet at the roof structure where the fire
25 department reportedly accessed the building for fire control. At the roof there was a roof patch over
26 the roof area.

1 The inspector was unable to access the tenant spaces adjacent to the fire damaged Unit. The receiver
2 received plans from a drafting company for the fire damage repairs and provided to the
3 inspector/contractor.

4 A significant cost item in the contract/insurance estimate is the replacement of a glue-laminated
5 beam that was reportedly damaged by the fire department during the fire. There does appear to be a
6 vertical significant cut in the beam which replacement of was included in the provided bid.

7 Repairs to the electrical and fire sprinkler services will be required due to the damage. Replacement
8 of fire barrier drywall walls will be also required.

9 Inspection of one common area bathroom was made which was not secured and quite dirty. The
10 inspector/contractor ordered a locksmith to change all the locks at the building.

11 Many complaints from the tenants regarding infestation of bugs and other critters were reported to
12 the inspector.

13 The inspector/contractor, Cardinal Consulting, met with representatives of DH- Hinwiddie-Hines
14 Construction, Inc. (DH) at the site to review the contract they provided for the repairs.

15 Cardinal Consulting will be reviewing the estimate and providing their own estimate for repairing
16 the damage which is believed to be, at this time, less than this estimate and possibly significantly.

17 However, that remains to be determined after a complete investigation of the entire property is
18 completed as there are other significant issues regarding lack of power and other possible issues.

19
20 Cardinal Consulting met with some of the other tenants; notices were placed upon the doors on the
21 tenants not met in person confirming the receivership and instructions on where to send the rent
22 checks to in the future.

23 Allegedly, the Defendant had attempted to arrange prepayment of rents with some tenants prior to
24 the July 1, 2015 rent and in certain cases up to 6 months in advance.

25 At this time, it appears that there are 8 tenants occupying the building and best efforts will be made
26 to obtain the July 1st and future month payments.

27
28

1 Due to lack of power, two tenants refuse to pay the rent. Efforts will be made as part of the repairs
2 needed to restore power to those tenants. According to them, Bixby had promised them that he
3 would restore power over a month ago but had failed to do so.

4 The Defendant has various construction equipment, a trailer and two construction mobile offices at
5 the site and arrangements have been made with his counsel to meet with him and have the equipment
6 removed from the site.

7 Work in Progress:

8 Additional trips to the site have been made on the following dates:

9 June 29, 2015

10 The building was walked to determine the scope of the project, current project status and discussions
11 were made with some of the tenants.

12
13 We met with the San Francisco Running Association who was in the process of vacating the
14 building. They indicated that due to unfulfilled promises from Mr. Bixby, they were relocating to
15 another facility, Eli, a representative of the Association indicated that they had legal claims pending
16 against Mr. Bixby due to the occupancy, but did not want to discuss in person. We requested that
17 they contact us regarding this pending claim but have not received any notice.

18
19 The exterior of the building was confirmed to be in fair condition. The roof was walked and
20 appeared to be in generally serviceable condition. There was a patch over the fire damaged roof
21 area, so there were no immediate concerns.

22
23 The fire damaged suite, #750 was accessed and an original assessment of the damage was made.
24 There structure was damaged and repairs will be required, but the building did not appear to be of
25 immanent danger of collapse or having further damage. Smoke damage, removal of prior fire barrier
26 systems, a cut beam, damage to the electric and damage to the sprinklers were noted. Repairs are
27 required.

28

1 We met with Custom Fabrication, the Welding company, Herrolds Electric and John Mikelonis at
2 this time.

3
4 We met with DH Construction at the site to review the scope of work, contract/bid and discuss the
5 history.

6
7 DH Construction indicated that they had only spent about 20 minutes on site with Mr. Bixby prior to
8 the contract. They indicated that Mr. Bixby had indicated the work scope. They further indicated
9 that they figured, and discussed with Mr. Bixby that if they did not have to spend as much on the
10 repair work, they could do other improvements at the project such as upgrading electrical and
11 possible tenant improvements. It was our opinion that this contract was made more for the purpose
12 of creating a document that could be provided to the lender rather than an arms length transaction for
13 the actual repairs of the fire damaged project.

14
15 Cleaned the bathrooms lightly. Removed spiders and sprayed with pest control to remove concerns
16 of tenants over the large number of spiders and reported frequent visitation of black widow spiders
17 in the bathroom. (There was no working lock on the bathroom door and it was open).

18
19 Posted letters on each of the tenant spaces indicating that the receivership was in place and rents
20 should be directed to the receiver.

21
22 June 30, 2015

23 Discussions were completed with various tenants including Mikelonis and Spegalia in regards to the
24 project. Discussions with Sacramento County Police regarding the marijuana growing. Notes
25 completed for the project to date.

26
27 July 2, 2015

28

1 Visited the site for purposes of collection of rents. A meeting was scheduled with Mr. Bixby to
2 arrange for his removal of all his equipment and vehicles. According to his attorney, Charles
3 Tweedy, he was to meet at the site this morning and failed to do so and repeated attempts have been
4 made without success.

5 July 3, 2015

6 Met at the site with a locksmith to change locks to secure the building. Talked with tenants.
7 Bathroom was secured. Locks were changed on many of the tenant locations.

8

9 July 7, 2015

10 Secondary visit to the site to collect additional due rents. We had a meeting with Mr. Spiegalia, who
11 did not arrive. Met with other tenants to discuss the project.

12

13 July 8, 2015

14 Met with the electrician to review proposal for electric revisions to the property. There is no
15 electrical service at the two west spaces. The electric for these spaces was disconnected and added
16 to Mikelonis' space.

17

18 July 9, 2015

19 Worked with SMUD on electric to avoid a shut off and to determine tenants and electrical services
20 in general. Met with Mr. Spiegalia and Zac to collect cash rents and provide email confirmations of
21 rents. Walked tenant spaces at 700 and 1100.

22

23 July 14, 2015.

24 Debris was dumped on the site. Met with a hauler at the site to remove weeds, debris and large tank.
25 Walked the site.

26

27 July 23, 2015

28

1 Site was visited to meet with tenants, real estate personnel and walked the site. Met with Mr.
2 Spagalia to discuss rental status. Walked the tenant spaces that were open. The real estate personnel
3 were requested to provide an overall review of the building, get some thoughts on valuation and
4 recommendations on the final use of the building.

5
6 **Case Administration**

7 **Insurance:** The Defendant's insurance has been under management and control of the
8 Plaintiff.

9 **Taxing Authorities:** The Receiver is in process of informing the IRS of appointment of the
10 Receiver using Form 56.

11 **Defendant's Banks:** There are no Bank accounts for solely the property estate that the
12 Receiver has been given access to or informed about.

13 **Receiver Bank Accounts:** Receiver has established a Receiver Bank Account with Heritage
14 Bank of Commerce, Danville, CA. There is approximately \$7000 in this account as of this date.

15
16 **Attorney, Accountant, and Legal Issues**

17 **Attorney:** Outside legal Counsel, Theodore K. Klaassen, Rutan & Tucker, LLP, Five Palo
18 Alto Square, 3000 El Camino Real, suite 200, Palo Alto, Ca 94306-9814, has been engaged, as
19 permitted in the Order, and has filed all necessary documents with the Court to confirm employment
20 for the Plaintiff. No Attorney has been retained by the Receiver at this time.

21 **Accountant:** No outside accountant has been retained at this time.

22 **Legal Issues:** Uncertain at this time.

23
24 **Financial Information**

25 Current Balance at Heritage Bank is \$ \$15,758.77 which includes partial July rents captured. There
26 are outstanding checks(1) to Cardinal Consulting for \$8,332.45. Rents are to be collected August 1st.
27 A revised estimate for repairs will be prepared over the next week and submitted to the Bank for
28 approval to begin restoration of the building from the fire damage.

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Fees and Expenses of the Receiver and Professionals:

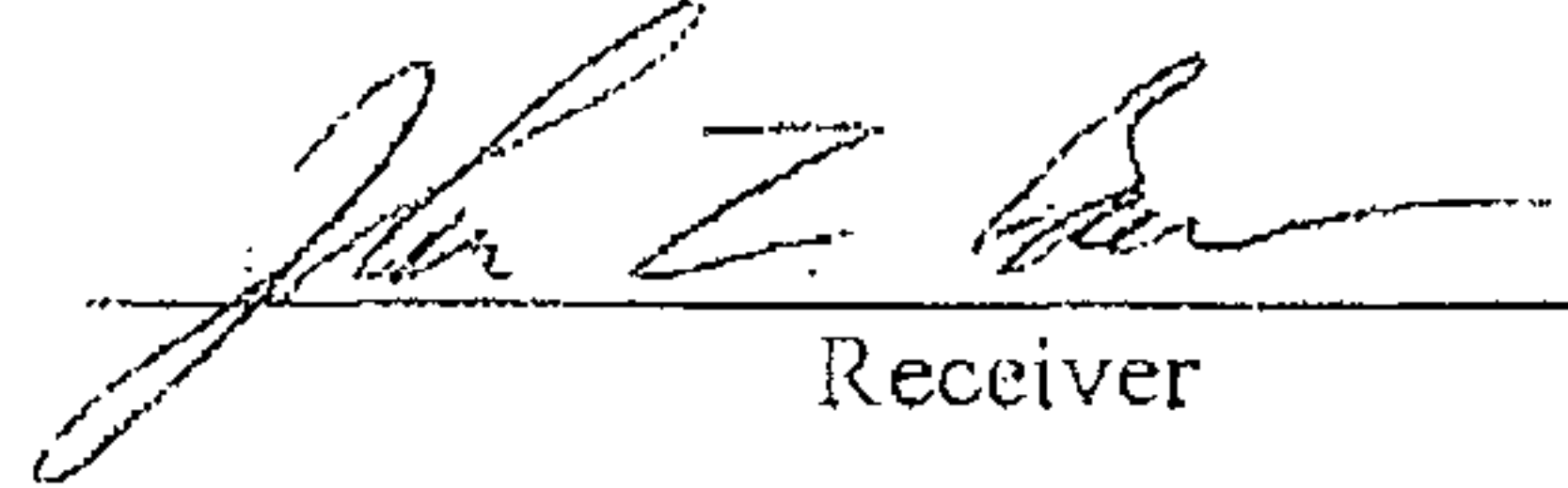
Receiver Fees: For the Period June 18, 2015 through August 1, 2015, the Receiver fees are \$ 6,812.50.

Legal Fees: None from Receiver.

Conclusion

I hereby declare that this report is accurate to the best of my knowledge.

Signed August 1, 2015, in Fairfield, CA.


Receiver

Bixby Receivership – John Z. Barr, Receiver Timesheet

Date	Client	Work Performed	Time Spent
20-Jun	Westamerica/Bixby	Review Pleadings	1.0hrs
21-Jun	Westamerica/Bixby	Bond Discussion and Application	45 min
24-Jun	Westamerica/Bixby	Phone calls-Cardinal/Review Pleadings	45 min
25-Jun	Westamerica/Bixby	Phone calls-Cardinal-site visit discussion	1.5 hrs
26-Jun	Westamerica/Bixby	Calls with tenants, cardinal, counsel. Review docs	1.5 hrs
30-Jun	Westamerica/Bixby	Smud discussions/legal/tenant discussions/heritage bk	1.25hrs
1-Jul	Westamerica/Bixby	review of leases, conference re: issues at site	1.25hrs
July 2-4	Westamerica/Bixby	Bank account set up and various deposits	1.5hrs
3-Jul	Westamerica/Bixby	Conference with Cardinal re: locks and tenants	.50hrs
6-Jul	Westamerica/Bixby	Follow up Review of inspections/tenant issues/calls	2.0 hrs
8-Jul	Westamerica/Bixby	Review site map/conference calls	1.0hrs
9-Jul	Westamerica/Bixby	Cardinal meeting	1.0hrs
14-Jul	Westamerica/Bixby	Review and discuss repairs	1.5hrs
15-Jul	Westamerica/Bixby	Follow up tenant issues	.50hrs
16-Jul	Westamerica/Bixby	Review invoices/discuss scope and plans	2.0hrs
23-Jul	Westamerica/Bixby	Trip to Sacramento	8 hrs
25-Jul	Westamerica/Bixby	Write up Report	2.0hrs
		TOTAL	27.25hrs
		<u>\$250 * 27.25 hrs = \$6,812.50</u>	

1 **PROOF OF SERVICE**

2 *(Westamerica Bank v. Mark J. Bixby, et al.*
3 *Sacramento Superior Court Case No. 34-2015-00175119)*

4 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

5 I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State
6 of California. I am over the age of 18 and not a party to the within action. My business address is
611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931.

7 On July 28, 2015, I served on the interested parties in said action the within:

8 **RECEIVER'S FIRST INTERIM REPORT**

9 as stated below:

10 Charles A. Tweedy
11 Law Offices of Charles A. Tweedy
11341 Gold Express Drive, Suite 110
12 Gold River, CA 95670

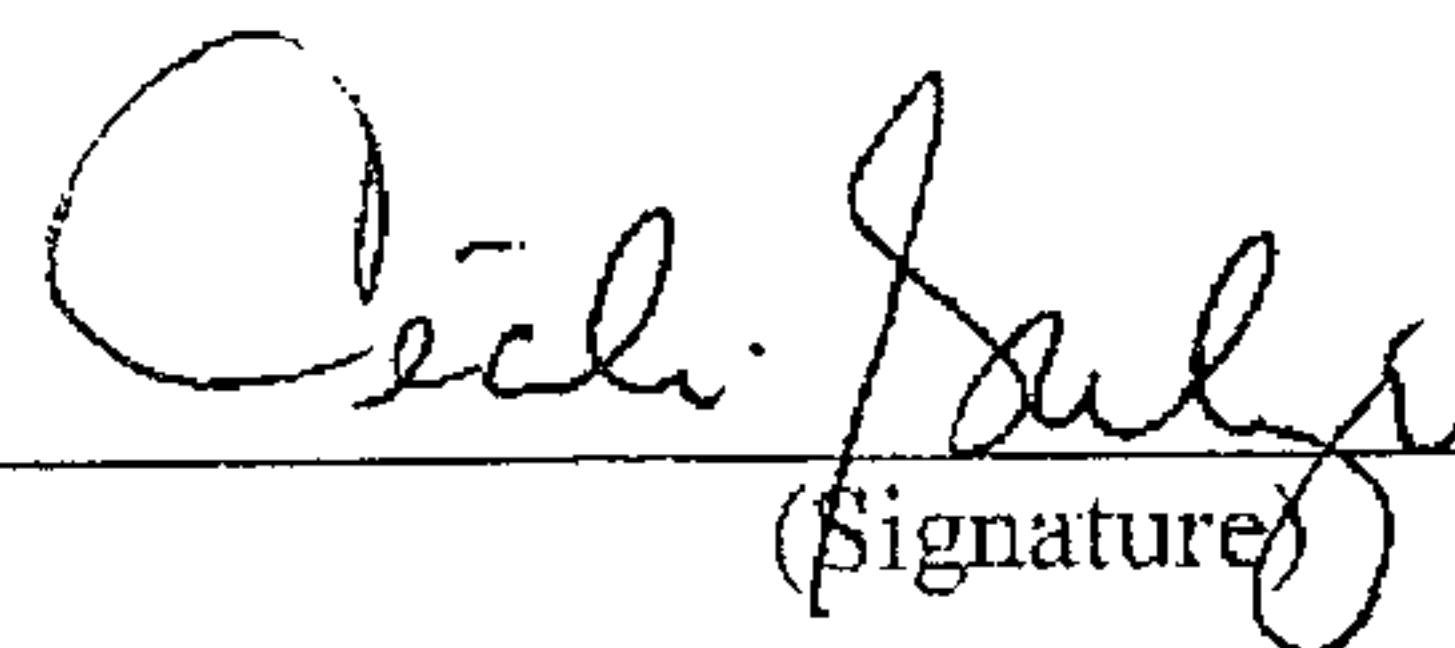
13 (BY MAIL) by placing a true copy thereof in sealed envelope(s) addressed as shown
above.

14 In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand
15 personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection
and processing correspondence for mailing with the United States Postal Service. Under that
16 practice, I deposited such envelope(s) in an out-box for collection by other personnel of Rutan &
Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same
17 day in the ordinary course of business. If the customary business practices of Rutan & Tucker,
LLP with regard to collection and processing of correspondence and mailing were followed, and I
18 am confident that they were, such envelope(s) were posted and placed in the United States mail at
Costa Mesa, California, that same date. I am aware that on motion of party served, service is
19 presumed invalid if postal cancellation date or postage meter date is more than one day after date
of deposit for mailing in affidavit.

20 Executed on July 28, 2015, at Costa Mesa, California.

21 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

22
23 Cecilia Solórzano
24 (Type or print name)

25 
26 (Signature)