

ORIGINAL

In The Supreme Court of Ohio

Jill Cannata, et al

Appellants

vs.

Snider Interests LLC, et al

Appellees

Case No.

13-0806

(An Appeal from the 8th District Court of Appeals Case No. 13 CA 99468)

(Trial Court- Cuyahoga County Common Pleas Court 12 CV 785850, 12 CV 786574) (Consolidation Case)

APPELLANTS' MEMORANDUM IN SUPPORT OF JURISDICTION

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**Explanation of Why this Case involves Substantial Constitutional Issues and
is a Case of Great Public General Interest**

This case poses important questions of first impression for the Ohio Supreme Court. Under what conditions can a Receiver sale real property of the receivership. With countless foreclosures, many receivers are now looking at receiver's sales in lieu of foreclosure sales. Countless underwater real estate properties owned by real estate entities are placed into receivership and dissolution. Substantial important due process considerations and constitutional issues involving notice, evidentiary hearing, creditor's rights, lien holders' rights, and service issues arise in this setting. These are present in the present appeal. In particular, the issue of legal standing of creditors, lien holders, mortgagees, and ownership rights of the members of the real estate limited liability company are directly and expressly involved in this appeal. This affects the countless number of foreclosures and receiverships throughout the entire State of Ohio. This appeal involves substantial constitutional due process issues and rights and is one of extreme public interests affecting the entire State of Ohio, countless foreclosures, and countless receiverships.

Due process considerations and requirements, require that an evidentiary hearing occur to give the parties meaningful notice, and a meaningful opportunity to be heard, *Ohio Director of Transportation. vs. Eastlake Land Dev. Co.* (2008) 177 O App 3rd 379. The cornerstone of due process is reasonable notice and an opportunity to be heard at a meaningful time and place. *Atkinson vs. Grumman Ohio Corp.* (1988) 37 OS 3rd 80, *Moldovan vs. Cuyahoga Cty. Welfare Dept.* (1986) 25 OS 3rd 293, 295, *Adamson vs. California* (1947) 332 US 46, 61. Denying one the mandatory evidentiary hearing violates one's constitutional due process rights under the Ohio Constitution Article 1, Section 16 and the United States Constitution 5th and 14th Amendments. Due process places upon the government the duty to give reasonable opportunity to be heard at a

meaningful time to those whose interests in life, liberty and property are adversely affected by legal action. *Mullane vs. Central Hanover Bank & Trust Co.* (1950) 339 US 306, 70 S Ct. 65, 94 L.Ed 865. Do creditors, lienholders, mortgagees and owners of a real estate limited liability company have legal standing when the Court approved Receiver Order mandate that they receive notice of the proposed receiver sale? This Court has yet to set out any procedures for standing regarding receivership sale of property. This will be a case of first impression. This Court has yet to set what due process requirements and procedures are mandated in receivership sales. The statutory provisions for receivership under ORC Section 2735 are silent as to procedures for a receivership sale of foreclosed property but that does not mean that there are **no** requirements. This position has been rejected by an appellate court. *Ohio Director of Transp. of State vs. Eastlake Land Dev. Co.* (2008) 177 O App 3rd 379, Par. 33 (“The dissent succumbs to the logical fallacy “post hoc ergo proper hoc” that if a foreclosure procedure statutorily mandates notice, opportunity to be heard, independent appraisal and public sale, and this is not a foreclosure action, then notice, opportunity to be heard, independent appraisal, and public sale are not required. **We hold here to the contrary:** a receiver’s sale is subject to due process requirements and review, and the failure to provide the same requires reversal and remand”).

No sale should proceed, however, without adequate notice to lienholders and an opportunity to be heard. In most cases, the preferred means of notice is for the receiver to file a complaint to sell, issue a summons to all lienholders, file a motion to sell and serve all lienholders of record with a copy of the motion to sell. This Court needs to address whether this procedure is required or mandated. Directly related to these questions are the legal standing of creditors, lienholders and mortgagees to appeal any approved sale of the receiver. This is the exact question in this appeal. This question is one of first impression and affects countless

creditors, lienholders, and mortgagees involving receivership sales. Appellants' constitutional rights were aggrieved or prejudiced. No Summon and service pursuant to Civil Rule 4.1 has been made, *Ohio Director of Transp. of State vs. Eastlake Land Dev. Co.* (8th District) (2008) 177 O App 379, Par. 25 (holding there was a failure to serve the creditor with a summons and complaint regarding the sale). Thus the Appellants should have legal standing to challenge the validity, legality, and constitutionality of the process, procedures and hearing on the sale of the BCS Property, *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, Syllabus ("Appeal lies only on behalf of a party aggrieved by the final order appealed from. Appeals are not allowed for the purposes of settling abstract questions, but only to correct errors injuriously affecting the appellant").

Statement of Case and Facts

The Trial Court cases involved actions for the statutory dissolution of Bridgeview Center South LLC ("BCS"). A Receiver was appointed. The Receiver filed on 12-14-12 a Motion of Receiver for Authority to Sell Real Property Located at 5400-5410 Transportation Blvd. Garfield Hts., Ohio ("BCS Property") ("BCS Sale"). The BCS Sale was made pursuant to the Receiver Order. Compliance with the Receiver Order was mandatory. On 12-27-12 with **no** notice and **no** evidentiary hearing the Trial Court approved the BCS Sale. Appellants appealed the approval of the BCS Sale. Receiver filed a Motion to Dismiss the Appellants appeal for lack of standing. The Court of Appeals granted said Motion to Dismiss for lack of standing.

Law and Argument

Proposition of Law No. 1: The Receiver by its own actions and conduct has admitted that the Appellants have standing as is clearly evidenced by the Receiver's attempt to make the Appellants parties to the litigation, regarding the proposed sale of the BCS Property, by its attempt to provide the Appellants with notice regarding the proposed sale of the BCS Property.

The Receiver filed a Motion of Receiver for Authority for the BCS Sale on 12-14-12.

The Receiver Motion expressly provides in its Notice that **it is being expressly served pursuant to and in accordance with Section 13 of the Receiver Order.** In pertinent part the Notice expressly provided as follows:

NOTICE

The Receiver is **servng this Motion in accordance with Paragraph 13 of the Receiver Order.** (See Attached Certificate of Service)

AS PROVIDED IN THE RECEIVER ORDER, ANY OBJECTION OR RESPONSE TO THIS MOTION MUST BE FILED WITH THE CLERK OF THIS COURT NOT LATER THAN TEN (10) AFTER DECEMBER 14, 2012 WHICH IS THE DATE UPON WHICH THIS MOTION IS BEING FILED. IN OTHER WORDS, ANY OBJECTION OR RESPONSE TO THIS MOTION IS DUE NO LATER THAN DECEMBER 24, 2012.

The Certificate of Service expressly lists and names Jill Cannata, and Sam Cannata, Trustee u/t/a Dated July 16, 1997 (“Cannata 97 Trust”), and Gerald W. Phillips, Attorney who appears on behalf of his law firm Phillips & Co. LPA as expressly listed and stated on all of the pleadings. The Supplemental Certificate of Service filed on 12-17-12, again expressly lists and names all of these parties and adds Cannata Phillips LPA LLC. The Jill Cannata Trust is an owner, member and stakeholder in Cannata Infinity LLC who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. The Cannata 97 Trust is an owner, member and stakeholder in Cannata Infinity LLC who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. Jill Cannata is a beneficiary of the Jill Cannata Trust who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. Cannata Infinity LLC is the owner, member and stakeholder in BCS who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. Thus, the Jill Cannata Trust, the Cannata 97 Trust, and Jill Cannata have an economic interest and financial interest in BCS

and in any sale of the BCS Property and its sales proceeds. *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, 161 (holding that “It is fundamental rule that to be entitled to institute an appeal or error proceedings a person must have a present interest in the subject matter of the litigation and must be aggrieved or prejudiced by the judgment, order or decree”)

Proposition of Law No. 2: The Trial Court’ own Receiver Order, Section 13, on its face, clearly provides the Appellants with standing to challenge the proposed sale of the BCS Property as is clearly evidenced by the procedures for a hearing on the proposed sale of the BCS Property.

Furthermore, the Receiver Order, Section 13 expressly mandates and requires that notice be sent to all interested parties and who is affected by the proposed sale. In pertinent part Section 13 expressly provides as follows:

Any motion by the Receiver for Court approval of any act of the Receiver requiring Court Approval (including **any proposed sale of assets or property**; disposition of claims, lawsuits, or proceedings; modification of this Order; or request for instructions) shall be served upon the Plaintiffs, Defendants, any lessee of any particular mortgage property, **any party affected by the proposed sale** or disposition of any claims, lawsuits, or proceedings, and all other persons who have filed and served on the Receiver a request for special notice.

Notice shall be provided not less than the fourteen (14) days in advance of any hearing or as otherwise provided by the Court with **an objection or response due ten (10) days from the date of filing**. Notice may be served by U.S. Mail, express/overnight mail, personal service, facsimile, or electronic mail.

Expressly pursuant to and in accordance with Section 13 of the Receiver Order, the Receiver attempted to send the Appellants notice of the proposed sale of the BCS Property. As is clearly evidenced by the Receiver own actions and conduct, the filing of the Receiver Sale Motion and the attempted service of such Receiver Sale Motion directly and indirectly upon the Appellants as is clearly evidenced by the Certificate of Service and the Supplemental Certificate of Service it has admitted that the Appellants have standing. This clearly evidences the Receiver’s attempt

to make the Appellants parties to the litigation, regarding the proposed sale of the BCS Property. This clearly evidences the Receiver's attempt to provide the Appellants with notice regarding the proposed sale of the BCS Property. This Section 13 of the Receiver Order expressly provides for a hearing, and a minimum of fourteen (14) day notice of any hearing. In fact **no** evidentiary hearing ever took place, **no** hearing date was ever set, and **no** notice of any hearing was ever set. These are blatant violations of the constitutional rights of the Appellants. *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, 161 (holding that "A cardinal principle which applies alike to every person desiring to appeal, whether a party to the record or not, is that he must have an interest in the subject matter of the litigation. His interest must be immediate and pecuniary, and not a remote consequence of the judgment; a future, contingent or speculative interest is not sufficient. Appeals are not allowed for the purposes of settling abstract questions, however interesting or important to the public generally, but only to correct errors injuriously affecting the appellant")

Proposition of Law No. 3: Appellants clearly have standing since important and substantial constitutional rights of the Appellants are involved, related to, and affected by the sale of the BCS Property, their constitutional rights to challenge the sale, and their constitutional rights of due process of law, "adequate notice" and a "meaningful opportunity to be heard", under the Ohio Constitution Article 1, Section 16, and the U.S. Constitution 5th and 14th Amendments.

Appellants' important and substantial constitutional rights are involved in the present appeal, their constitutional rights to challenge the sale, and their constitutional rights of due process of law, "adequate notice" and a "meaningful opportunity to be heard", under the Ohio Constitution Article 1, Section 16, and the U.S. Constitution 5th and 14th Amendments. This is represented by the Receiver own actions and conduct, the filing of the Receiver Sale Motion and the attempted service of such Receiver Sale Motion directly and indirectly upon the Appellants as is clearly evidenced by the Certificate of Service and the Supplemental Certificate of Service.

This clearly evidences the Receiver's attempt to make the Appellants parties to the litigation, regarding the proposed sale of the BCS Property. This clearly evidences the Receiver's attempt to provide the Appellants with notice regarding the proposed sale of the BCS Property. This Section 13 of the Receiver Order expressly provides for a hearing, and a minimum of fourteen (14) day notice of any hearing. In fact **no** evidentiary hearing ever took place, **no** hearing date was ever set, and **no** notice of any hearing was ever set. These are blatant violations of the constitutional rights of the Appellants.

There are a multitude of claimed deficiencies in the service of the notice for filing objections. Some of these deficiencies are the failure of service upon Gerald W. Phillips, the failure of service upon Phillips & Co. LPA, the failure of service and/or defective service upon Cannata Phillips LPA LLC, no Summon and service pursuant to Civil Rule 4.1 has been made, *Ohio Director of Transp. of State vs. Eastlake Land Dev. Co.* (2008) 177 O App 379, Par. 25 (holding there was a failure to serve the creditor with a summons and complaint regarding the sale), Insufficiency of Service, Insufficiency of Service of Process and the lack of compliance with Paragraph No. 13 of the Receiver's Order regarding Objections.

There are a multitude of claimed deficiencies regarding the failure to hold any evidentiary hearing prior to the granting of the order approving the sale of the BCS Property. Some of these deficiencies are as follows:

- 1) **No notice** of any kind for any hearing was given **prior** to the granting of the Motion of Receiver for Authority for the BCS Sale on December 27, 2012;
- 2) **No hearing** of any kind was held **prior** to the granting of the Motion of Receiver for Authority for the BCS Sale on December 27, 2012;

- 3) The granting of the Motion of Receiver for Authority for the BCS Sale on December 27, 2012 violated Par. 13 of the Receiver's Order dated 8-7-12;
- 4) The granting of the Motion of Receiver for Authority for the BCS Sale on December 27, 2012 violated Par. 13 of the Receiver's Order dated 8-7-12, the Motion was granted without any notice, without any hearing, and within 13 days of the filing of the Motion;
- 5) The Notices have **not** been given at least 14 days prior to any hearing on the Motion of Receiver for Authority to Sell Real Property

The granting of the Motion of Receiver for Authority for the BCS Sale on December 27, 2012 violated the constitutional due process rights of the Appellants under the Ohio Constitution Article 1, Section 16, and the U.S. Constitution 5th and 14th Amendments, and denies the Appellants of the constitutional due process of adequate notice and a meaningful opportunity to be heard, *Mullane vs. Central Hanover Bank & Trust Co.*, (1950) 339 US 306, 70 S.Ct. 652 (holding that due process requires that notice must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action, afford them meaningful opportunity to present their objections, and must be reasonably calculated to apprise all interested parties of the subject matter of the hearing), *Bounds vs. Smith* (1977) 430 US 817 (holding that one has a constitutional right to the "meaningful access to the courts");

Due process considerations and requirements, require that an evidentiary hearing occur to give the parties meaningful notice, and a meaningful opportunity to be heard, *Ohio Director of Transportation. vs. Eastlake Land Dev. Co.* (2008) 177 O App 3rd 379. The cornerstone of due process is reasonable notice and an opportunity to be heard at a meaningful time and place. *Atkinson vs. Grumman Ohio Corp.* (1988) 37 OS 3rd 80, *Moldovan vs. Cuyahoga Cty. Welfare Dept.* (1986) 25 OS 3rd 293, 295, *Adamson vs. California* (1947) 332 US 46, 61. Denying one

the mandatory evidentiary hearing violates one's constitutional due process rights under the Ohio Constitution Article 1, Section 16 and the United States Constitution 5th and 14th Amendments. Due process places upon the government the duty to give reasonable opportunity to be heard at a meaningful time to those whose interests in life, liberty and property are adversely affected by legal action. *Mullane vs. Central Hanover Bank & Trust Co.* (1950) 339 US 306, 70 S Ct. 65, 94 L.Ed 865. Appellants clearly have standing since important and substantial constitutional rights of the Appellants are involved, related to, and affected by the sale of the BCS Property, their constitutional rights to challenge the sale, and their constitutional rights of due process of law, "adequate notice" and a "meaningful opportunity to be heard", under the Ohio Constitution Article 1, Section 16, and the U.S. Constitution 5th and 14th Amendments. *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, 161 (holding that "It is fundamental rule that to be entitled to institute an appeal or error proceedings a person must have a present interest in the subject matter of the litigation and must be aggrieved or prejudiced by the judgment, order or decree"). Appellants' constitutional rights were aggrieved or prejudiced. Pursuant to an appellate court decision the Appellants rights were invaded and error was committed. No Summon and service pursuant to Civil Rule 4.1 has been made, *Ohio Director of Transp. of State vs. Eastlake Land Dev. Co.* (8th District) (2008) 177 O App 379, Par. 25 (holding there was a failure to serve the creditor with a summons and complaint regarding the sale), *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, 161 (holding that "It is fundamental that appeal lies only on behalf of a party aggrieved. Unless the appellant can show that his rights have been invaded, no error is shown to have been committed by the court or body which entered the final order")

Proposition of Law No. 4: Appellants clearly have legal standing since the Appellants have substantial and important rights as creditors, mortgagees, owners, or stakeholders regarding the sale of the BCS Property and its sales proceeds.

The Certificate of Service expressly lists and names Jill Cannata, and Sam Cannata, Trustee u/t/a Dated July 16, 1997 (“Cannata 97 Trust”), and Gerald W. Phillips, Attorney who appears on behalf of his law firm Phillips & Co. LPA as expressly listed and stated on all of the pleadings. The Supplemental Certificate of Service filed on 12-17-12, again expressly lists and names all of these parties and adds Cannata Phillips LPA LLC. The following Appellants, Gerald W. Phillips, Cannata Phillips LPA LLC, and Phillips & Co. LPA (“Phillips Group”) are creditors of BCS. BCS owes the Phillips Group legal fees. The Phillips Group is the mortgagee of the BCS Roadway Mortgage to secure these legal fees. The Phillips Group has a legal interest in the sale of the BCS Property both as creditors and mortgagees of the BCS Roadway Mortgage. These legal interests are clearly part of the record. That is why the Receiver attempted to make them parties and attempted to give them notice of the proposed sale of the BCS Property. Why list them and include them in the Certificate of Service and the Supplemental Certificate of Service. Why attempt to comply with Section 13 of the Receiver Order and attempt to make them parties and attempt to serve them. If an evidentiary hearing on the sale would have taken place, these facts, evidence and these interests would have been presented as part of the record on the hearing for the proposed sale of the BCS Property. But **no** evidentiary hearing took place, so **no** record occurred.

The Jill Cannata Trust is an owner, member and stakeholder in Cannata Infinity LLC who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. The Cannata 97 Trust is an owner, member and stakeholder in Cannata Infinity LLC who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. Jill

Cannata is a beneficiary of the Jill Cannata Trust who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. Cannata Infinity LLC is the owner, member and stakeholder in BCS who is expressly listed in the Certificate of Service and the Supplemental Certificate of Service. Thus, the Jill Cannata Trust, the Cannata 97 Trust, and Jill Cannata have an economic interest and financial interest in BCS and in any sale of the BCS Property and its sales proceeds. That is why the Receiver attempted to make them parties and attempted to give them notice of the proposed sale of the BCS Property. Why list them and include them in the Certificate of Service and the Supplemental Certificate of Service. Why attempt to comply with Section 13 of the Receiver Order and attempt to make them parties and attempt to serve them. If an evidentiary hearing on the sale would have taken place, these facts, evidence and these interests would have been presented as part of the record on the hearing for the proposed sale of the BCS Property. But **no** evidentiary hearing took place, so **no** record occurred. *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, 161 (holding that “It is fundamental rule that to be entitled to institute an appeal or error proceedings a person must have a present interest in the subject matter of the litigation and must be aggrieved or prejudiced by the judgment, order or decree”)

Proposition of Law No. 5: Appellants clearly have standing since important and substantial rights of the Appellants to challenge the proposed sale of the BCS Property are directed affected by the order of the sale of the BCS Property, as is clearly evidenced by the well settled and establish principles of law such as waiver, estoppel, and res judicata.

Expressly pursuant to and in accordance with Section 13 of the Receiver Order, the Receiver sent the Appellants notice of the proposed sale of the BCS Property. As is clearly evidenced by the Receiver own actions and conduct, the filing of the Receiver Sale Motion and the attempted service of such Receiver Sale Motion directly and indirectly upon the Appellants as is clearly evidenced by the Certificate of Service and the Supplemental Certificate of Service

it has admitted that the Appellants have standing. This clearly evidences the Receiver's attempt to make the Appellants parties to the litigation, regarding the proposed sale of the BCS Property. This clearly evidences the Receiver's attempt to provide the Appellants with notice regarding the proposed sale of the BCS Property.

The Appellants if they failed to file Objections as provided for in Section 13 of the Receiver Order, legal rights would be affected. The failure to file Objections pursuant to Section 13 of the Receiver Order would constitute a waiver of their rights, or would act as an estoppel to challenge the proposed sale of the BCS Property if they were properly made parties, properly notified, and an evidentiary hearing in compliance with the constitutional due process requirements was held. Also, the approval of the sale of the BCS Property without their appearance, and their objections would result in the application of the doctrine of res judicata and bar them from contesting and challenging the sale of the BCS Property if they were properly made parties, properly notified, and an evidentiary hearing in compliance with the constitutional due process requirements was held. Appellants clearly have standing since important and substantial rights of the Appellants to challenge the proposed sale of the BCS Property are directly affected by the order of the sale of the BCS Property, as is clearly evidenced by the well settled and established principles of law such as waiver, estoppel, and res judicata. *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, 161 (holding that "It is fundamental that appeal lies only on behalf of a party aggrieved. Unless the appellant can show that his rights have been invaded, no error is shown to have been committed by the court or body which entered the final order")

Proposition of Law No. 6: Appellants clearly have legal standing to challenge the validity, legality, and constitutionality of the process, procedures and hearing on the sale of the BCS Property.

Appellants clearly have standing since important and substantial constitutional rights of the Appellants are involved, related to, and affected by the sale of the BCS Property, their constitutional rights to challenge the sale, and their constitutional rights of due process of law, “adequate notice” and a “meaningful opportunity to be heard”, under the Ohio Constitution Article 1, Section 16, and the U.S. Constitution 5th and 14th Amendments. Appellants clearly have legal standing since the Appellants have substantial and important rights as creditors, mortgagees, owners, or stakeholders regarding the sale of the BCS Property and its sales proceeds. Appellants clearly have standing since important and substantial rights of the Appellants to challenge the proposed sale of the BCS Property are directed affected by the order of the sale of the BCS Property, as is clearly evidenced by the well settled and establish principles of law such as waiver, estoppel, and res judicata.

In addition to these, Appellants have legal standing to question the validity, the legality and constitutionality of the process, procedures and hearing on the sale of the BCS Property. The Appellants have legal standing to question the service deficiencies. The Appellants have legal standing to question the notice deficiencies. Appellants also have legal standing to question the validity, legality, and constitutionality regarding the evidentiary hearing or more appropriately the lack of such a hearing. Appellants also have legal standing to question the validity, legality and constitutionality of Section 13 of the Receiver Order. The sale of the BCS Property was approved on 12-27-12 without compliance of the holding of the required and mandatory evidentiary hearing, without compliance with appropriate service, without compliance with appropriate notice. Actual controversies exist over these issues. These are based upon existing facts, circumstances and events that occurred. These are not abstract questions, or theoretical questions. Were the actions and conduct of the Receiver in attempting to make the Appellants

parties, attempting to serve them, in attempting to provide notice to them, and the Court in failing to hold an evidentiary hearing on the sale of the BCS Property, legal, valid and constitutional? Thus the Appellants clearly have legal standing to challenge the validity, legality, and constitutionality of the process, procedures and hearing on the sale of the BCS Property, *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, Syllabus (“Appeal lies only on behalf of a party aggrieved by the final order appealed from. Appeals are not allowed for the purposes of settling abstract questions, but only to correct errors injuriously affecting the appellant”).

Conclusion

Do creditors, lienholders, mortgagees and owners of a real estate limited liability company have legal standing when the Court approved Receiver Order mandate that they receive notice of the proposed receiver sale? This Court has yet to set out any procedures for standing regarding receivership sale of property. This will be case of first impression. This Court has yet to set what due process requirements and procedures are mandated in receivership sales.

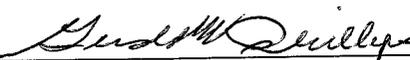
The statutory provisions for receivership under ORC Section 2735 are silent as to procedures for a receivership sale of foreclosed property but that does not mean that there are no requirements. This position has been rejected by an appellate court. *Ohio Director of Transp. of State vs. Eastlake Land Dev. Co.* (2008) 177 O App 3rd 379, Par. 33 (“The dissent succumbs to the logical fallacy “post hoc ergo proper hoc” that if a foreclosure procedure statutorily mandates notice, opportunity to be heard, independent appraisal and public sale, and this is not a foreclosure action, then notice, opportunity to be heard, independent appraisal, and public sale are not required. **We hold here to the contrary:** a receiver’s sale is subject to due process requirements and review, and the failure to provide the same requires reversal and remand”).

Pursuant to this appellate court decision the Appellants rights were expressly invaded and error was committed. No Summon and service pursuant to Civil Rule 4.1 has been made, *Ohio Director of Transp. of State vs. Eastlake Land Dev. Co.* (8th District) (2008) 177 O App 379, Par. 25 (holding there was a failure to serve the creditor with a summons and complaint regarding the sale), *Ohio Contract Carriers Assoc. Inc. vs. Public Utilities Commission of Ohio* (1942) 140 OS 160, 161 (holding that “It is fundamental that appeal lies only on behalf of a party aggrieved. Unless the appellant can show that his rights have been invaded, no error is shown to have been committed by the court or body which entered the final order”) This appeal involves substantial constitutional due process issues and rights and is one of extreme public interests affecting the entire State of Ohio, countless foreclosures, and countless receiverships.


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Attorney at Law
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Counsel for Appellants

Proof of Service

A copy of the Memorandum has been served upon the following: Robert T. Glickman, McCarthy, Lebit, Crystal & Liffman Co. LPA, 101 West Prospect Ave. Suite 1800, Cleveland, Ohio 44115, Attorney for Appellees David Snider, Robin Snider and Snider Interests, Inc. and Kenneth R. Callahan, Buckley King LPA, 600 Superior Ave. East Suite 1400, Cleveland, Ohio 44114, Attorney for Appellee Receiver David Browning; by ordinary mail this 20th day of May 2013.


Gerald W. Phillips (0024804)
Counsel for Appellants

Appendix

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

CANNATA-INFINITY, LLC

Appellant

COA NO.
99468

LOWER COURT NO.
CP CV-785850
CP CV-786574

COMMON PLEAS COURT

-vs-

SNIDER INTERESTS LLC, ET AL.

Appellee

MOTION NO. 463288

Date 04/03/13

Journal Entry

Motion by Receiver to strike and dismiss that portion of the notices of appeal filed on behalf of persons who lack standing to appeal is granted as to appellants; Cannata Vista Way LLC, Jill Cannata, the Jill Cannata Trust, Gerald Phillips, Cannata Phillips LPA LLC, and Phillips and Co., LPA.

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CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By *[Signature]* Deputy

Judge KATHLEEN ANN KEOUGH, Concur

[Signature]
EILEEN A. GALLAGHER
Presiding Judge

EXHIBIT
A

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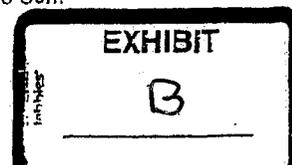
IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SNIDER INTERESTS, LLC, *et al.*,) JUDGE RICHARD J. MCMONAGLE
)
) Plaintiffs,) CASE NO: CV 12 785850
) CASE NO: CV 12 786574
)
 vs.)
) ORDER GRANTING MOTION OF
) RECEIVER FOR AUTHORITY TO SELL
) REAL PROPERTY LOCATED AT 5400 -
) 5410 TRANSPORTATION
) BOULEVARD, GARFIELD HEIGHTS,
) OHIO BY PRIVATE SALE

This matter came before the Court on the Motion of Receiver for Authority to Sell Real Property Located at 5400 - 4510 Transportation Boulevard, Garfield Heights, Ohio by Private Sale with accompanying Memorandum in Support (collectively, the "Motion to Sell") for an Order:

- A. Authorizing the Receiver to proceed with the private sale, pursuant to O.R.C. §§ 1701.91 and 2735.01, *et seq.*, and the Receiver Order,¹ of certain real property and associated personal property which are a part of this receivership, located at 5400 - 4510 Transportation Boulevard, Garfield Heights, Ohio (the "Property"), to Garfield Hope Loan Acquisition, LLC (the "Buyer"), as set forth in the Motion to Sell;
- B. Authorizing the sale of the Property free and clear of all liens, claims and encumbrances, including tax liens, with liens, claims and encumbrances

¹ All capitalized terms not defined herein shall have the same meaning as set forth in the Motion to Sell.



attaching to the net sale proceeds of the sale remaining after payment of outstanding real estate taxes and the administrative expenses and costs of the Receiver; and

- C. Granting any necessary and proper related relief.

Such relief was sought in order to enable Receiver to sell the Property effectively and efficiently, to preserve current real estate value, and to maximize value for the creditors of the receivership estate and limit the accrual of costs to such receivership estate.

The Court having reviewed the Motion to Sell, and the Court having determined that the legal and factual basis set forth in the Motion to Sell established just cause for the relief granted herein,

THE COURT HEREBY FINDS AND CONCLUDES THAT:

- A. The Motion to Sell is granted in its entirety;
- B. All capitalized terms not defined herein shall have the same meaning as set forth in the Motion to Sell;
- C. The Receiver has complied with the notice requirements set forth in section 13 of the Receiver Order;
- D. The Receiver has advanced sound and sufficient business reasons, and it is a reasonable exercise of the Receiver's business judgment, to sell all right, title and interest in and to the Property upon the terms and conditions set forth in the Agreement;
- E. The Agreement is hereby approved and the Property shall be sold upon the terms and conditions outlined therein;

- F. That the Receiver may take such further actions reasonably necessary to consummate the terms of the Agreement;
- G. The execution of the Agreement and any related documents and the sale of the Property is in the best interest of the receivership estate, its creditors and all other parties in interest;
- H. The Receiver may sell the Property free and clear of any and all liens, claims, and encumbrances, including tax liens (collectively, the "Liens and Claims") to the fullest extent permitted by law. Any valid Liens and Claims shall attach to the proceeds of the sale pending further Court order. The Receiver reserves his right to dispute the validity or enforceability of any Liens and Claims; and
- I. The Receiver has fully complied with the procedures set forth in the Motion to Sell and the Receiver Order, and the Receiver's execution and delivery of the Agreement is hereby approved and ratified.

**BASED ON THE FOREGOING, IT IS THEREOFRE ORDERED,
ADJUDGED AND DECREED as follows:**

1. The Motion to Sell is hereby GRANTED and the Receiver shall sell the Property as outlined in the Agreement.
2. The sale of the Property to the Buyer pursuant to the Agreement is in all respects approved, and found to be in the best interest of the receivership estate, its creditors and all other parties in interest.
3. The sale and transfer of the Property to the Buyer in accordance with the Agreement shall: (i) be free and clear of any and all Liens and Claims, which shall be paid in accordance with the Agreement, with any valid Liens and Claims attaching to the

proceeds of the sale pending further Court order; (ii) constitute a legal, valid and effective transfer of the Property to the Buyer upon closing, and marketable title to the Property shall vest with the Buyer; (iii) be binding upon the parties to this action, all of their creditors, and the Receiver; (iv) constitute a sale and transfer in exchange for reasonably equivalent value and fair consideration; and (v) constitute a transaction undertaken in good faith on behalf of the Receiver.

4. Following the closing of the Agreement, the Receiver shall hold the net sales proceeds in a segregated federally insured bank account created and maintained by the Receiver pending further order of this Court.

5. The Agreement was entered into following arms-length, good faith, non-collusive negotiations and the sale of the Property pursuant to the terms and conditions of the Agreement represents a good faith transaction. The Buyer is a good faith purchaser of the Property.

6. The terms and conditions of the sale of the Property represent fair and reasonable consideration.

7. Every federal, state and local government agency or department shall be and hereby is authorized to accept any and all documents and instruments necessary and appropriate to consummate the sale of the Property to the Buyer.

8. The Receiver is hereby authorized and directed to take all appropriate actions necessary to consummate the Agreement.

9. All creditors, including taxing authorities, are hereby ordered to execute any necessary lien releases, title certificates or other documents necessary to effectuate

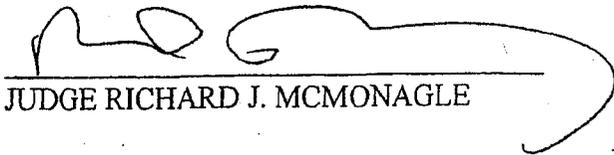
transfer of title and release of liens as may reasonably be requested by the Receiver and/or the Buyer.

10. The Receiver and his agents and employees are hereby authorized and directed to execute such documents as are necessary or desirable to carry out the Agreement.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the sale of the Property and the construction performance and enforcement of the Agreement, the sales proceeds and the relief granted pursuant to this Order.

Date:

Dec. 27, 2012


JUDGE RICHARD J. MCMONAGLE

RECEIVED FOR FILING

DEC 27 2012

GERALD E. FUERST, CLERK
By  Deputy

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