

CHAPTER 12-RECEIVERSHIP

1201. ACTION BY JUDGMENT CREDITOR FOR SEQUESTRATION

Where final judgment for a sum of money has been rendered against a corporation, and an execution issued has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestering the property of the corporation and providing for a distribution thereof.

1202. APPOINTMENT OF RECEIVER OF PROPERTY OF A DOMESTIC OR FOREIGN CORPORATION

(a) A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

- (1) An action or special proceeding brought under chapter 10 (Non-judicial dissolution) or 11 (Judicial dissolution).
- (2) An action under section 1201 (Action by judgment creditor for sequestration).
- (3) An action brought by the Nation Prosecutor or by a shareholder to preserve the assets of a corporation.
- (4) An action to preserve the assets of any kind, tangible or intangible, of a foreign corporation which has been dissolved, nationalized or its authority or existence otherwise terminated or cancelled in the jurisdiction of its incorporation or which has ceased to do business, brought by any creditor or shareholder of such corporation or by one on whose behalf an order of attachment against the property of such corporation has been issued.

(b) A receiver shall be subject to the control of the court at all times and may be removed by the court at any time.

(c) All actions or special proceedings brought by or against a receiver shall have a preference.

1203. TEMPORARY AND PERMANENT RECEIVER

(a) At any stage before final judgment or final order in an action or special proceeding brought under this chapter, the court may appoint one or more receivers of the property of the corporation or of the property of a foreign corporation against which an action has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation). Notice of an application for the appointment of a receiver shall be given to the Nation Prosecutor and to such other persons and in such manner as the court directs. The determination by the court of the necessity or advisability of appointing a receiver or an attorney for a receiver, and the allowance of expenses, commissions or compensation to the receiver or his attorney, shall be subject to review on appeal. This provision shall not affect any other right to review on appeal.

(b) A receiver appointed by or under a final judgment or order in an action or special proceeding, or a temporary receiver who is continued by the final judgment or order, is a permanent receiver. The court may confer upon a temporary receiver the powers, and subject him to the duties of a permanent receiver, or so much thereof as it deems proper.

1204. OATH AND SECURITY

(a) A receiver, before entering upon his duties, shall:

- (1) Take and subscribe an oath that he will faithfully, honestly and impartially discharge the trust committed to him, and the oath shall be filed with the clerk of the court in which the action or special proceeding is pending.
- (2) File with the clerk of such court a bond, with at least two sufficient sureties or a bond executed by any fidelity or surety company in a penalty fixed by the court appointing him, conditioned for the faithful discharge of his duties as receiver. The court may at any time direct a receiver to give a new bond with new sureties and with like condition.

1205. DESIGNATION OF DEPOSITORIES BY COURT

All orders appointing a receiver of a corporation shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate distribution shall be deposited and no other deposits and no investment of such funds shall be made, except upon the order of the court.

1206. POWERS OF PERMANENT RECEIVER

(a) A permanent receiver, upon qualifying under section 1204 (Oath and security), shall be vested with title to all the property of the corporation wherever situated or of the property within the territorial jurisdiction of the Nation of a foreign corporation against which an action or special proceeding has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), for the benefit of the creditors and shareholders of the corporation.

(b) A permanent receiver shall have the power:

- (1) To sue his own name or otherwise for the recovery of the property, debts and causes of action of the corporation. No set-off or counterclaim shall be allowed in any such action for any demand unless it was owing by the corporation to the defendant before the commencement of the action or special proceeding in which the receiver was appointed or unless it shall have been incurred by the receiver subsequent to his appointment.
- (2) To sell at public or private sale all the property vested in him, in such manner and on such terms and conditions as the court shall direct, and to make necessary transfers and conveyances thereof.
- (3) To examine on oath, to be administered by him, any person concerning any matter pertaining to or affecting the receivership.
- (4) To settle or compound any demands by or against the receivership.

(c) When more than one receiver is appointed, all provisions in this chapter in reference to one receiver shall apply to them.

(d) When more than one receiver is appointed, the debts and property of the corporation may be collected and received by any of them; when more than two receivers are appointed, the powers and rights conferred on them may be exercised by any two.

(e) When more than one receiver is appointed, the survivor or survivors of such receivers shall have all the powers and right of the receivers.

1207. DUTIES OF RECEIVER UPON APPOINTMENT

(a) Upon appointment and qualification, a receiver shall have the following duties:

- (1) To give immediate notice of his appointment by publication once a week for two successive weeks in two newspapers of general circulation in Madison County, New York or, in the case of a foreign corporation against which an action has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), in a newspaper of general circulation as directed by the court, requiring:
 - A) All persons indebted to the corporation to render an account of all debts owing by them to the corporation and to pay the same to the receiver at a specified place and by a specified day.
 - B) All persons having in their possession any property of the corporation to deliver the same to the receiver at the specified place and by the specified day.
 - C) All creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims to the receiver in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Whenever a receiver is appointed in dissolution proceedings under chapter 10 (Non-judicial dissolution) or chapter 11 (Judicial dissolution), section 1007 (Notice to creditors; filing or barring claims) shall apply and shall control the giving of notice to creditors and claimants and the filing and barring of claims.
- (2) To call a general meeting of the creditors of the corporation within four months from the date of his appointment by a notice to be published as directed in subparagraph (a)(1), setting forth the time and place of such meeting, which time shall be not more than two months, nor less than one month after the first publication of such notice. At such meeting, or at an adjournment thereof, the receiver shall present a statement of all accounts and demands for and against the corporation, its subsisting contracts, and the money and other assets in his hands.
- (3) To keep true books of account of all moneys received and expended by him as receiver, which books shall be open for inspection at reasonable times by creditors or other persons interested therein. On or before the first day of February in each year, for the preceding calendar year, and at such other times as the court shall direct, the receiver shall file with the clerk of the court by which he was appointed a verified statement showing the assets received, the disposition thereof, the money on hand, all payments made, specifying the persons to whom paid and the purpose of the payments, the amount necessary to be retained to meet necessary expenses and claims against the

receiver, and the distributive share in the remainder of each person interested therein. A copy of such statement shall be served by the receiver upon the Nation Prosecutor within five days after the filing thereof.

1208. PENALTY FOR CONCEALING PROPERTY FROM RECEIVER

Any persons having possession of property belonging to the corporation, who shall wrongfully withhold such property from the receiver after the day specified in the notice given under section 1207 (Duties of receiver upon appointment), shall forfeit to the receiver double the value of such property, and the same may be recovered in an action by the receiver.

1209. RECOVERY OF ASSETS

(a) Whenever a receiver, by verified petition to the Nation court shall show that he has good reason to believe that any person has in his possession or under his control, or has wrongfully concealed, withheld or disposed of, any property of the corporation, or that any person can testify concerning such facts, the court, with or without notice, shall make an order requiring such person to appear before the court or a referee, at a time and place designated, and submit to an examination concerning such facts. In such order, or at any time thereafter, in its discretion, the court may enjoin and restrain such person from disposing of any property of the corporation in his possession or under his control.

(b) In any examination under such order, the court may confer immunity.

(c) A person so ordered to appear shall be subject to the same penalties upon failure to appear and testify in obedience to such order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

(d) A person appearing for examination in obedience to such order shall be sworn, and shall be entitled to represented on such examination by counsel, and may be cross-examined, or may make a voluntary statement in his own behalf concerning the subject of his examination.

(e) The testimony taken under such order shall be signed and sworn to by the person examined, and be filed in the office of the clerk of the Nation court. If it shall appear that any person is wrongfully concealing or withholding, or has in his possession or under his control, any property of the corporation, on notice to him, the court may make an order requiring him forthwith to deliver it to the receiver, subject to the further order of the court.

1210. ORDER OF PAYMENT BY RECEIVER

(a) Laborers' wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

(b) The receiver shall, subject to any prior liens or encumbrances, distribute the residue of the

moneys in his hands, among the creditors whose claims have been proved and allowed, as follows:

- (1) All debts due by such corporation to the Oneida Indian Nation and all debts entitled to a preference under applicable laws.
- (2) All debts that may be owing by the corporation as trustee.
- (3) Judgments against the corporation, to the extent of the value of the real property on which they are liens.
- (4) All other creditors, in proportion to their respective demands, without preferences to specialty debts.

1211. FINAL DISTRIBUTION BY RECEIVER

- (a) If there remains property of the corporation after the first distribution, the receiver shall, within one year thereafter, make a final distribution among the creditors entitled thereto.
- (b) A creditor or claimant who failed to prove his claim before the first distribution and who proves it before the final one shall receive the sum he would have been entitled to on the first distribution before any further distribution shall be made to other creditors or claimants.
- (c) Unless the court shall otherwise direct, no other distribution shall be made thereafter to creditors, except to those having pending actions against the corporation or the receiver.
- (d) After the final distribution to creditors, the receiver shall not be answerable to any creditor or claimant, unless his claim shall have been proved before or at the time specified in the notice of the final distribution.

1212. DISPOSITION OF MONEYS RETAINED; SURPLUS; UNCLAIMED DISTRIBUTIONS

- (a) When any action pending at the time of the final distribution shall be terminated, the receiver shall apply the moneys retained by him to the payment of the amount recovered, and his necessary charges and expenses incurred therein.
- (b) After the final distribution to creditors and after deducting his charges and expenses, the receiver shall distribute any surplus among the shareholders of the corporation, in accordance with their respective rights.
- (c) Any portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and for whom there is not legal representative, shall be paid by the receiver to the Nation as abandoned property within six months from the date fixed for the payment of the final liquidating distribution, and be subject to the provisions of the abandoned property law.

1213. OMISSION OR DEFAULT OF RECEIVER

Upon notice to the Nation Prosecutor and upon such notice to creditors or others interested as the court shall direct, the court may, in the furtherance of justice, relieve a receiver from any omission or default, on such conditions as may be imposed, and, on compliance therewith, confirm his action.

1214. APPLICATION BY NATION PROSECUTOR FOR REMOVAL OF RECEIVER AND TO CLOSE RECEIVERSHIP

(a) Whenever he deems it to be to the advantage of the shareholders, creditors or other persons interested in the assets of any corporation for which a receiver has been appointed, the Nation Prosecutor may move:

- (1) For an order removing the receiver and appointing another in his stead;
- (2) To compel the receiver to account;
- (3) For such other and additional orders as may facilitate the closing of the receivership

1215. RESIGNATION BY RECEIVER; FILLING ANY VACANCY

(a) A receiver may petition the court appointing him for an order to show cause why he should not be permitted to resign.

(b) The petition shall be accompanied by a verified account of all the assets of the corporation received by him, of all payments or other disposition thereof made by him, of the remaining assets of the corporation in respect to which he was appointed receiver and the situation of the same, and of all his transactions as receiver. Thereupon, the court shall grant an order directing notice to be given to the sureties on his official bond and to all persons interested in the property of the corporation to show cause, at a time and place specified, why the receiver should not be permitted to resign. If it shall appear that the proceedings of the receiver in the discharge of his trust have been fair and honest and that there is not good cause to the contrary, the court shall make an order permitting such receiver to resign. Thereupon he shall be discharged and his powers as receiver shall cease, but he shall remain subject to any liability incurred prior to the making of such order. The court, in its discretion, may require the expense of such proceeding to be paid by the receiver presenting the petition.

(c) Any vacancy created by resignation, removal, death or otherwise, may be filled by the court, and the property of the receivership shall be delivered to the remaining receivers or, if there are none, to the successor appointed by the court. The court may summarily enforce delivery by order in the action or special proceeding in which the receiver was appointed.

1216. FINAL ACCOUNTING; NOTICE; DUTY OF NATION PROSECUTOR

(a) Within one year after qualifying, the receiver shall apply to the court for a final settlement of his accounts and for an order for distribution, or, upon notice to the Nation Prosecutor, for an extension of time, setting forth the reasons therefore. If the receiver has not so applied for a settlement of his accounts or for such extension of time, the Nation Prosecutor or any creditor or shareholder may apply for an order that the receiver show cause why an accounting and distribution should not be had, and after the expiration of eighteen months from the time the receiver qualified, it shall be the duty of the Nation Prosecutor to apply for such an order on notice to the receiver.

(b) Before presenting a final account, the receiver shall give notice of his intention to file it by publication, under subparagraph (a)(1) of section 1207 (Duties of receiver upon appointment), setting forth the time and place of filing and presentation to the court. The receiver shall also give not less than eight days' written notice to the sureties on his official bond.

(c) Upon presentation of such account, the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order. The court may refer the account and the hearing, in whole or in part, to a referee who shall report thereon to the court.

1217. COMMISSIONS

(a) A receiver shall be entitled, in addition to his necessary expenses, to such commissions upon the sums received and disbursed as may be allowed by the court, as follows:

(1) On the first twenty thousand dollars, not exceeding five percent;

(2) On the next eighty thousand dollars, not exceeding two and one-half percent; and

(3) On the remainder, not exceeding one percent.

(b) If the commissions of the receiver so computed do not amount to one hundred dollars, the court in its discretion may allow such sum not exceeding one hundred dollars as shall be reasonable.

(c) When more than one receiver shall be appointed, the compensation herein provided shall be divided between them, as the court directs.

1218. SPECIAL PROVISIONS RELATING TO ACTIONS OR SPECIAL PROCEEDINGS AGAINST FOREIGN CORPORATIONS

(a) In any action or special proceeding brought against a foreign corporation under this chapter, the following provisions shall apply.

(1) Service of the summons in such action may be made personally within the territorial

jurisdiction of the Oneida Indian Nation, by delivery of the same to any officer or director of the corporation, or by publication pursuant to an order obtained as hereinafter provided.

- (2) An order directing service by publication of the summons shall be made upon application of a plaintiff in any such action and shall be founded upon a verified complaint, alleging that the defendant is a foreign corporation and has or may have or may be entitled to assets, credits, chose in action or other property, tangible or intangible within the territorial jurisdiction of the Oneida Indian Nation and that such corporation has been dissolved, nationalized or that its authority or existence has been terminated or cancelled in the jurisdiction of its incorporation, or that it has ceased to do business, and upon an affidavit reciting that personal service of the summons cannot be effected within the territorial jurisdiction of the Oneida Indian Nation with due diligence and that a temporary receiver of its property within the territorial jurisdiction of the Oneida Indian Nation has been appointed pursuant to this chapter in such action and that a copy of the order appointing the receiver has been served personally by or on behalf of such receiver upon a person, firm or corporation holding property, tangible or intangible, of the said foreign corporation exists and that demand therefore has been made upon such person, firm or corporation by or on behalf of such receiver.
- (3) The order directing service of the summons shall require the publication thereof in a newspaper published in the general locality of the Nation in the Oneida or English language at least once a week for four successive weeks, and shall also require the mailing on or before the date of the first publication of a copy of the summons, complaint and order to the corporation at its last known principal or head office in the stated or country of its incorporation.
- (4) In any such action, the summons shall be served personally or an order directing service thereof by publication shall be obtained and the first publication thereof made within sixty days after the appointment of the temporary receiver, and if served by publication, the service shall be made complete by the continuance thereof.
- (5) If served by publication, service of the summons shall be deemed complete on the date of the last publication. The action shall be deemed commenced upon the issuance of the summons. The order appointing the receiver and the paper upon which the same is granted shall be filed in the office of the clerk of the court where the action is triable within ten days after the order is made.
- (6) In the event that the defendant defaults in answering, or if after a trial the court is satisfied that the defendant has ceased to do business by reason of any thing or matter whatsoever, or that it has been dissolved, nationalized, or its authority or existence has been otherwise terminated or cancelled, the court shall thereupon direct judgment, appointing a permanent receiver and directing the receiver to liquidate the assets, credits, chose in action and property, tangible and intangible, within the territorial

jurisdiction of the Nation of the said defendant, in the manner provided in this chapter.

- (7) The time between the cessation of business by the corporation or its dissolution or nationalization or the termination or cancellation of its authority or existence and the appointment of a receiver pursuant to this chapter, whichever time is longer, plus three years after such appointment, shall not be a part of the time limited by domestic or foreign law for the commencement of an action or for the assertion of a claim therein by or no behalf of or against said corporation or by or against said receiver, whether or not said action or claim has heretofore been barred by any statute of limitations of the Nation or any other Indian Nation or country.
- (8) The existence of and cause of action of or against such corporation existing at the time of its dissolution, nationalization, or the termination or cancellation of its authority or existence, or arising thereafter, shall not be deemed ended, abated or affected thereby, nor shall actions brought by or against such corporation or a receiver appointed hereunder or any remedy therein be deemed to have ended or abated or to have been affected by reason of such dissolution, nationalization, or termination or cancellation of its authority or existence. This provision shall apply to all property, tangible and intangible, debts, demands, and chooses in action of such corporation within the Nation, and to all litigation heretofore or hereafter brought in the Nation court to which the corporation or the receiver of said corporation appointed pursuant to the provisions of this chapter is a party. Any receiver appointed pursuant to the provisions of the article may be substituted for such corporation in any action or proceeding pending in the Nation court to which such corporation is a party and may intervene in any action or proceeding which relates to or affects any of the assets or claims of the corporation and revive any action which shall have heretofore or which may hereafter have abated, and such dissolution, nationalization, or termination or cancellation of its authority or existence in the jurisdiction of its incorporation, or any confiscatory law or decree thereof, shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands or chooses in action of such corporation within the territorial jurisdiction of the Nation or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business within the territorial jurisdiction of the Nation. Nothing contained in this subdivision shall be deemed to validate claims for or causes of action or actions to recover property located in or moneys payable in the jurisdiction of incorporation which are unenforceable under the laws of such jurisdiction.
- (9) If any receiver or trustee has heretofore been appointed for such corporation or its property in any action or proceeding, either before or supplementary to judgment, otherwise than in an action brought pursuant to this article, such receiver or trustee may be appointed or continued as the receiver in any action brought pursuant to the provisions of this chapter.
- (10) The appointment of a receiver or the pendency of an action for the appointment of such

receiver, shall until such receiver shall be discharged or until such action shall have terminated, be a bar to any subsequent application or action for the appointment of a receiver of the assets of the same corporation.

- (11) An action shall be commenced within three years from the discovery by the plaintiff or his predecessor in interest, of any asset of said corporation within the territorial jurisdiction of the Nation.