EXHIBIT A

Filed 8/23/17 Leong v. Havens CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ARNOLD LEONG, Plaintiff and Respondent, v. WARREN HAVENS, Defendant and Appellant.	A147027 (Alameda County Super. Ct. No. 2002-070640)

Arnold Leong and Warren Havens have been involved, for over 15 years, in contentious litigation regarding the ownership and control of two entities holding licenses issued by the Federal Communications Commission (FCC or the Commission). Twelve years after the action was compelled to arbitration, the trial court appointed a receiver for the assets and granted a preliminary injunction restraining Havens from interfering with the receivership (the Receivership Order). (See Code Civ. Proc., § 1281.8.)[1] Havens appeals from the Receivership Order, pressing a litany of complaints. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1999 and 2001, Leong and Haven entered into written limited liability company agreements establishing Verde Systems LLC (Verde) (formerly Telesaurus-VPC LLC)

[1] "A party to an arbitration agreement may file in the court in the county in which an arbitration proceeding is pending . . . an application for a provisional remedy in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without provisional relief." (Code Civ. Proc., § 1281.8, subd. (b).)

and Telesaurus Holdings GB LLC (Telesaurus). The primary business of both Verde and Telesaurus is the acquisition and transfer of valuable radio spectrum licenses for the development of wireless networks.[2] According to the written limited liability company agreements (the LLC Agreements), Leong holds a 49.9 percent interest in each entity, while Havens owns the remaining 50.1 percent. The LLC Agreements also name Havens as "the initial" manager with "full and complete authority" to manage the entities' affairs.

Leong alleges he invested over a million dollars in the enterprise under an oral agreement that he and Havens would share ownership and control "50-50." Per the alleged agreement, Havens would only temporarily have sole management authority, to qualify for a FCC bidding discount, but Leong was to have an equal right of control in the near future. In 2001, Havens disavowed the existence of any such agreement. Thereafter, Leong maintains Havens excluded him from decision making and provided only extremely limited financial information.[3] And, despite the licenses yielding substantial returns on investment, Havens has not distributed any profit to Leong.

In 2002, Leong filed suit against Havens, seeking declaratory relief, dissolution, an accounting, and damages on breach of contract, fraud, and breach of fiduciary duty causes of action. In October 2003, Havens compelled Leong to arbitrate, pursuant to arbitration provisions contained in the LLC Agreements.[4] The LLC Agreements also contain a provision concerning choice of law, which reads in relevant part: "This Agreement and any and all disputes, controversies, claims, or differences . . . arising out

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[2] The FCC, acting pursuant to its authority created by the federal Communications Act of 1934 (FCA) (47 U.S.C. § 151 et seq.), regulates the right to obtain and use radio frequencies. It acts as the exclusive authority for the award and transfer of such licenses. (47 U.S.C. §§ 307, 309, 310(d).)

[3] The LLC Agreements require Havens, as manager, to provide Leong "within 120 days after the end of each Fiscal Year, an annual report containing a balance sheet as of the Fiscal Year end and an income statement."

[4] Despite being compelled to arbitration in 2003, the arbitration hearing began only in September 2015 and, at the time the appealed order was entered, had not yet concluded.

of, relating to, or having any connection with this Agreement (including any question relating to its existence, validity, interpretation, performance, or termination) shall (a) be governed by and construed in accordance with the [Delaware Limited Liability Company Act] and other laws of the State of Delaware applicable to contracts made or to be performed entirely within such state and without giving effect to any choice of law or similar principles that would lead to the selection of the law of another jurisdiction . . . ."

On April 22, 2015, in an administrative proceeding before the FCC in which Havens, Verde, and its wholly owned subsidiary Environmentel LLC (Environmentel) were parties, Administrative Law Judge Richard L. Sippel issued an order (the Sippel Order) finding that Havens, Verde, and Environmentel, had engaged in repeated "egregious" behavior before the Commission, including threatening members of the FCC staff, disregarding the ALJ's "clearly understandable" orders, ignoring deadlines, disregarding summary decision procedures, filing frivolous motions and interlocutory appeals, and making false or misleading statements. The ALJ found that Havens, Verde, and Environmentel "not only filed [a] Motion for Summary Decision in bad faith, but also engaged in patterns of egregious behavior that . . . warrant a separate proceeding in which several issues as to the character qualification of [Havens] and the [Havens companies] to hold Commission licenses are examined." The Sippel Order certified "such deliberate transgressions, together with an account of [Havens's] history of disruptive disregard of orders and otherwise contemptuous behavior, to the Commission for determination as to whether a separate proceeding should be designated to decide whether [Havens] and his companies qualify to hold [FCC] licenses." Following entry of the Sippel Order, Havens sought reconsideration and filed an interlocutory administrative appeal.

In May 2015, Leong responded to the Sippel Order by filing an ex parte application, in the Alameda County Superior Court, to appoint a receiver for Verde, Telesaurus, Environmentel, Environmentel 2 LLC (Environmentel-2), Intelligent Transportation and Monitoring Wireless LLC (Intelligent), Atlis Wireless LLC (Atlis), V2G LLC (V2G), and Skybridge Spectrum Foundation (Skybridge) (collectively, the

Receivership Entities)[5] and for entry of a temporary restraining order. Citing sections 564, subdivision (b)(9), and 1281.8, subdivision (b) of the Code of Civil Procedure, Leong argued a receivership was necessary to protect his valuable interests in the Receivership Entities and the FCC licenses. Leong contended the licenses were in "immediate jeopardy" if a receiver was not appointed immediately because the Sippel Order could trigger "a significant risk of imminent harm" due to limited transferability of the entities' FCC licenses in the event the FCC issued a "hearing designation order." Leong also insisted the Receivership Entities were "in imminent danger of insolvency" should they lose their licenses.

Havens initially opposed the receivership motion by arguing there was no emergency. He conceded that if a hearing designation order is entered, the entities would be unable to freely alienate their licenses thereafter, but insisted due process protections ensure the FCC will not " 'freeze' or prohibit[] the assignment or transfer of licenses for many months, if not years." He also asserted Leong was merely a competitor attempting to steal the licenses and that a receivership could work more harm than good.[6]

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[5] Environmentel and Environmentel-2 are wholly owned subsidiaries of Verde. Leong asserts an interest in Intelligent, Skybridge, Atlis, and V2G by virtue of a provision in the LLC Agreements giving him a right to a percentage of profits "attributable to the use of the Joint Licenses . . . by [Verde and Telesaurus] in its business, *including the business of subsidiaries and joint ventures*." (Italics added.) Havens, on the other hand, asserts Intelligent and V2G were "capitalized by [Havens] and various minority investors other than Leong." However, he concedes "Intelligent did borrow money from [Verde] and [Telesaurus]." Skybridge is a "charitable foundation created pursuant to section 501c of the Internal Revenue Code," which holds licenses donated by Telesaurus, Verde, Intelligent, Environmentel, and Environmentel-2. According to Havens, Atlis was created to collect revenue, pay expenses, and make necessary state and federal filings. Havens admits that, "to the extent [Atlis] holds money or other assets, it does so on behalf of the particular managed entity or entities to whom that money or those assets belong."

[6] At oral argument, Havens's counsel conceded Leong held no equity interest in any competitor of the Receivership Entities.

At a May 26, 2015 hearing on the motion, the Honorable Frank Roesch stated his inclination to appoint a receiver but took the matter under submission and ordered the parties to meet and confer regarding a proposed order. Before an order was entered, Havens removed the case to federal court on the theory it presents a FCC licensing dispute—purportedly triggering federal question jurisdiction. After finding the matter was "fundamentally a state court dispute" concerning only issues of business ownership and control, the federal district court remanded the matter to Alameda County Superior Court on an expedited basis.

On remand, Leong was granted leave to file his second amended complaint, which named six new parties (Environmentel, Environmentel-2, Intelligent, V2G, Atlis, and Skybridge) as Havens's alter egos.[7] The following causes of action were alleged against all defendants except Verde and Telesaurus: (1) fraud; (2) breach of contract (against Havens alone); (3) breach of fiduciary duty; (4) breach of the implied covenant of good faith and fair dealing; (5) unjust enrichment; and (6) minority shareholder suppression. Appointment of a receiver, dissolution, an accounting, and other equitable remedies were also sought.

Leong also renewed his motion for appointment of a receiver and issuance of a preliminary injunction, relying on Code of Civil Procedure sections 564, subdivisions (b)(1) and (b)(9), and 1281.8, subdivision (b).[8] Leong again asserted the Sippel Order remained a threat to his interests, in that the FCC could issue a hearing

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[7] Verde and Telesaurus had been previously added as parties to the arbitration without objection.

[8] Section 564, subdivision (b), provides in relevant part: "A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases: [¶] (1) In an action . . . between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured. [¶] . . . [¶] (9) In all other cases where necessary to preserve the property or rights of any party."

designation order at any time "to commence proceedings on Havens'[s] (and the [Receivership Entities']) qualifications to hold licenses." Leong asked the trial court to take judicial notice of certain FCC records, including the Sippel Order and the FCC Enforcement Bureau's opposition to Havens's motion for reconsideration.[9] Leong also presented alternative evidence of gross mismanagement, in the form of declarations, showing Havens's failure to prepare and provide annual reporting of financial information and Havens's assignment or donation of licenses owned by Verde and Telesaurus to the other Receivership Entities.

In his opposition, Havens maintained Delaware law "governs" the dispute but did not explicitly direct the trial court to the choice of law clause in the LLC Agreements or point out any relevant difference between California and Delaware law. Havens and the Receivership Entities again argued the Sippel Order did not constitute an emergency, that appointment of a receiver would be risky because Havens possesses unique business acumen, and that, because Havens would retain equitable ownership interest, appointment of a receiver would not necessarily insulate the licenses from revocation. Havens also asserted a receiver should not be appointed until after the arbitrator decided Leong's disputed ownership claims.[10]

At an August 11, 2015 hearing, the motion for appointment of a receiver was granted, but formal entry of the order was delayed until October 5, 2015. The court explained, "If the arbitration has been completed before that time or if the parties agree to do something differently, I would consider a request to reverse course and not issue that order." On October 1, 2015, the arbitration remained ongoing and the proposed date of entry of the order was continued.

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[9] The trial court did not explicitly rule on Leong's request for judicial notice, but we, like the parties, rely on these records as matters properly judicially noticed. (Evid. Code, § 452, subd. (c), 459, subd. (a).)

[10] Havens stated his position in the arbitration is that Leong, "by virtue of his improper conduct, had lost any ownership interest he may have had in any entity and simply is a creditor to the extent of the very limited monies he lent Havens."

The Receivership Order was ultimately entered on November 16, 2015. Susan Uecker was appointed receiver to "take control and possession of all property and assets of [the Receivership Entities]; as well as all FCC licenses owned or controlled by [Havens] as an individual." The Receivership Order also granted a preliminary injunction, which required Havens to turn over the Receivership Entities' property and assets as well as restrained Havens from, among other things, "interfering in any manner with the discharge of the receiver's duties under [the Receivership Order]" and "[c]ommencing, prosecuting, continuing to enforce, or enforcing any suit or proceeding in the name of the Receivership Entities . . . or otherwise acting on behalf of the Receivership Entities."[11]

After unsuccessfully seeking a stay of enforcement of the Receivership Order pending completion of the arbitration, Havens filed a timely notice of appeal from the Receivership Order. Both an order appointing a receiver and an order granting an injunction are appealable orders. (Code Civ. Proc., § 904.1, subds. (a)(6), (a)(7); *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1679.)[12]

II. DISCUSSION

We begin by dispelling a false premise underlying several of Havens's arguments on appeal. Despite conceding below that he would retain beneficial ownership of the licenses even after the appointment of a receiver, Havens now repeatedly asserts that Leong has "taken away" his property rights through the Receivership Order. A receiver

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[11] Certain amendments irrelevant to the issues on appeal were made to the Receivership Order on November 25, 2015.

[12] Leong has asked us to take judicial notice of events occurring after entry of the Receivership Order in support of the argument raised in his respondent's brief that Havens's appeal should be dismissed under the disentitlement doctrine. We initially deferred ruling on Leong's request for judicial notice, but we now grant the request, as to exhibit Nos. 5, 6, 20, and 21, and otherwise deny it. We also deny Havens's conditional request for judicial notice. Leong did not file a noticed motion to dismiss Havens's appeal under the disentitlement doctrine. Thus, the issue is not properly before us. (See *Halliburton Energy Services, Inc. v. Department of Transportation* (2013) 220 Cal.App.4th 87, 106; Cal. Rules of Court, rule 8.54.)

is a neutral party who holds the property for the benefit of all who have an interest therein. (6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 419, p. 357.) "[A] receiver takes possession of all corporate property and assets and exercises complete control over all the affairs of the corporation including the management of its everyday business." (*In re Jamison Steel Corp.* (1958) 158 Cal.App.2d 27, 35.) However, "[t]he receiver is an agent and officer *of the court* and the property in her or his hands remains under the control and continuous supervision of the court." (*Gold v. Gold* (2003) 114 Cal.App.4th 791, 806, italics added.) As the " 'hand of the court,' " the receiver aids the court " 'in preserving and managing the property involved in the suit for the benefit of those to whom it may ultimately be determined to belong.' " (*Marsch v. Williams* (1994) 23 Cal.App.4th 238, 248.)

"The appointment of a receiver rests within the discretion of the trial court." (*Gold v. Gold, supra,* 114 Cal.App.4th at p. 807.) "The order appointing a receiver will be reversed on appeal if there is a clear showing of an abuse of discretion." (*Id.* at p. 808.) "However, such power is not entirely uncontrolled and must be exercised with due regard to the facts presented in each particular case." (*Alhambra-etc. Mines v. Alhambra G. Mine* (1953) 116 Cal.App.2d 869, 873.) "Where there is evidence that the plaintiff has at least a probable right or interest in the property sought to be placed in receivership and that the property is in danger of destruction, removal or misappropriation, the appointment of a receiver will not be disturbed on appeal." (*Sachs v. Killeen* (1958) 165 Cal.App.2d 205, 213.) Havens contends the trial court lacked jurisdiction to enter the Receivership Order or, in the alternative, erred by applying California law rather than Delaware law. Havens also contends the trial court abused its discretion by ignoring less intrusive remedies and attempting to coerce a settlement. Havens's arguments are unpersuasive.

A. *Jurisdiction to Enter Receivership Order*

Havens argues the trial court lacked jurisdiction to make the Receivership Order on two grounds—preemption under the FCA and interference with an ongoing

arbitration. First, we consider and reject Havens's argument the Receivership Order was void because it was issued by the trial court after arbitration had been compelled.

Arbitrators do not have the power to appoint a receiver. (*Marsch v. Williams, supra*, 23 Cal.App.4th at pp. 245–246.) Both section 1281.8 of the Code of Civil Procedure and the arbitration provisions of the LLC agreements expressly permit resort to California courts for interim equitable remedies. Pursuant to statute, parties to arbitration proceedings may apply to the superior court for provisional remedies if, in addition to the usual requirements for such remedies, an award to the petitioner "may be rendered ineffectual" without such relief. (Code Civ. Proc., § 1281.8, subd. (b); *California Retail Portfolio Fund GMBH & Co. v. Hopkins Real Estate Group* (2011) 193 Cal.App.4th 849, 853; accord, *Jordan-Lyon Productions, Ltd. v. Cineplex Odeon Corp*. (1994) 29 Cal.App.4th 1459, 1471.) "Those provisional remedies include appointment of receivers, writs of possession, temporary restraining orders, and preliminary injunctions." (*California Retail Portfolio Fund*, at p. 855; accord, Code Civ. Proc., § 1281.8, subd. (a).) The trial court had jurisdiction to grant provisional relief despite the ongoing arbitration.

Havens also contends the trial court had no jurisdiction to enter the Receivership Order because, if the *licenses* needed protection, Leong's only remedy was to proceed before the FCC which has exclusive jurisdiction to "decide who controls its licenses." Havens relies on section 310(d) of title 47 of the United States Code, which provides: "Assignment and transfer of construction permit or station license. No construction permit or station *license*, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." (Italics added.) In fact, the Receivership Order fairly reconciles the trial court's own jurisdiction to appoint a receiver with the Commission's jurisdiction over licensing matters. (See *Radio Station WOW v. Johnson* (1945) 326 U.S. 120, 132 ["if the States' [laws] can be effectively respected while at the same time reasonable opportunity is afforded for the protection of

that public interest which [leads] to the granting of a license, the principal of fair accommodation between State and federal authority . . . should be observed"].) The Receivership Order recognizes and protects the powers of the FCC. It specifically provides: "As soon as possible, at her discretion, the Receiver shall execute and file with the [FCC] all notices, applications, reports or other documentation necessary to establish the Receiver's control over all FCC authorizations, permits, or licenses."

Havens fares no better under section 332(c)(3)(A) of the FCA, under which state and local governments are prohibited from regulating "the entry of or the rates charged by any commercial mobile service or any private mobile service, [but are not] prohibit[ed] from regulating the other terms and conditions of commercial mobile services." (47 U.S.C. § 332(c)(3)(A); *City of Huntington Beach v. Public Utilities Com.* (2013) 214 Cal.App.4th 566, 588.) Here, Havens does not persuasively explain how the Receivership Order "necessarily treads upon the federally-reserved areas" of rates and market entry. (*Fedor v. Cingular Wireless Corp*. (7th Cir. 2004) 355 F.3d 1069, 1072.). Instead, he makes a conclusory assertion that determination of the parties' disputed contractual rights constitutes regulation of market entry. The Receivership Order did *not* require resolution of the disputed contractual issue. The trial court merely decided the appointment of a receiver was appropriate in this case, where it is undisputed Leong has some interest in the Receivership Entities. In any event, we observe that the FCC itself has said, "contract questions are matters for the courts to decide under state and local law." (*In re Arecibo Radio Corp*. (F.C.C. 1985) 101 F.C.C.2d 545, 548.) Havens has not shown the trial court lacked jurisdiction to enter the Receivership Order.[13]

[13] The federal district court reached a similar conclusion in granting Leong's motion for remand. "Although not binding, a federal court's interpretation and application of federal preemption law, particularly in the same case, is entitled to substantial deference." (*Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1165.)

B. *Choice of Law*

Havens argues the trial court erred by applying California law, rather than Delaware law. We agree with Leong that Havens forfeited the issue by failing to adequately raise it in the trial court. In Havens's initial opposition to appointment of a receiver, he argued Delaware law and California law are identical on the appointment of a receiver. He also stated he was not conceding Delaware law applies. In subsequent opposition briefs to the renewed motion for appointment of a receiver, Havens maintained Delaware law "governs" the dispute but did not explicitly direct the trial court to the choice of law clause in the LLC Agreements or identify any relevant difference between California and Delaware law. Instead, appointment of a receiver was opposed under both California and Delaware law. Thus, it comes as no surprise that Havens cannot point to any choice of law ruling from the trial court and instead asserts we can infer a decision to apply California law from the Judicial Council form of the order.[14] Havens has forfeited any choice of law issue. (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1350, fn. 12; *Pelletier v. Alameda Yacht Harbor* (1986) 188 Cal.App.3d 1551, 1554, fn. 1; *Danzig v. Jack Grynberg & Associates* (1984) 161 Cal.App.3d 1128, 1139 ["the law of the forum state applies unless a party litigant makes a *timely* request to invoke the law of a foreign state"].)

In any event, the requirements for imposing a receiver on a solvent entity appear to be substantively the same under Delaware and California law.[15] Under Delaware law, it is also established that appointment of a receiver lies within the sole discretion of the court. (*Drob v. National Memorial Park, Inc.* (Del. Ch. 1945) 41 A.2d 589, 597; *Velcut Co. v. United States Wrench Mfg. Co.* (Del.Ch. 1928) 140 A. 801, 802.) Where a corporation is solvent, the Delaware courts may still exercise equitable power to appoint

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[14] In objections Havens submitted to the trial court, he stated he had no objection to the use of "the Judicial Council form itself."

[15] Havens misses the mark by attempting to show a difference between Delaware and California receivership law for insolvent entities. Leong did not seek appointment of a receiver on the ground the Receivership Entities were insolvent.

a receiver, but must exercise this power with great restraint. (*In re Carlisle Etcetera LLC* (Del.Ch. 2015) 114 A.3d 592, 601; *Carlson v. Hallinan* (Del.Ch. 2006) 925 A.2d 506, 543, clarified on other grounds by *Carlson v. Hallinan* (Del.Ch. May 22, 2006) 2006 Del.Ch.Lexis 95; *Vale v. Atlantic Coast & Inland Corp.* (Del.Ch.1953) 99 A.2d 396, 400.) The Delaware courts will exercise this power to appoint a receiver " 'only upon a showing of gross mismanagement, positive misconduct by corporate officers, breach of trust, *or* extreme circumstances showing imminent danger of great loss to the corporation which, otherwise, cannot be prevented.' " (*Carlson*, at p. 543, italics added; accord, *Vale*, at p. 400.) "Appointing a receiver for a solvent corporation is a radical remedy and should only be taken when the petitioning party has 'rather plainly shown his entitlement to it.' " (*Seneca Investments LLC v. Tierney* (Del. Ch. 2008) 970 A.2d 259, 265.)

Under California law, " '[t]he power to appoint a receiver is a delicate one which is exercised sparingly and with caution, and only in an extreme case under such circumstances as demand or require summary relief, and never in a doubtful case or where there is no necessity or occasion for the appointment.' " (*Morand v. Superior Court* (1974) 38 Cal.App.3d 347, 350.) "It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable. . . .' [Citations.] And a party to an action should not be 'subjected to the onerous expense of a receiver, unless . . . his appointment is obviously necessary to the protection of the opposite party.' " (*Id.* at p. 351.)

Havens has not shown an abuse of discretion under either California law or Delaware law. Havens insists the trial court erred by appointing a receiver because revocation of the Receivership Entities' licenses was *not* imminent after the Sippel Order. Even if we assume that Havens is correct that imminent risk of harm is required under Delaware law (*Berwald v. Mission Development Co.* (Del. 1962) 185 A.2d 480, 482), Havens's argument fails. Havens argues there was no imminent risk of harm because revocation of the Receivership Entities' licenses would be possible only after a contested hearing before the full Commission (47 U.S.C. § 312; 5 U.S.C. §§ 554, 558), and that

"[n]o revocation hearing . . . could take place for a very long time." But under *Jefferson Radio Co. v. Federal Communications Com.* (D.C.Cir. 1964) 340 F.2d 781, a licensee is prohibited from transferring a license while a proceeding that might lead to license forfeiture is pending. (*Id.* at p. 783.) Thus, Leong is correct that the Receivership Entities' ability to freely transfer its licenses would be jeopardized if the FCC determined a qualifications hearing was justified. At the time the Receivership Order was entered, evidence showed a hearing designation order could issue at "any time" and would be catastrophic for the Receivership Entities.

To invoke the authority to appoint a receiver under Code of Civil Procedure section 564, subdivision (b)(1), the plaintiff must establish a "joint interest with [the] defendant in the property; that the same was in danger of being lost, removed or materially injured, and that plaintiff's right to possession was probable." (*Alhambra-etc. Mines v. Alhambra G. Mine, supra*, 116 Cal.App.2d at p. 873.) Although the parties vehemently disagree regarding Leong's precise ownership share, there is no legitimate conflict in the evidence.[16] Havens makes a wholly unsupported argument that Leong has *no* interest, but the record undisputedly shows Leong has a joint interest in Telesaurus and Verde. Leong also presented evidence showing he has a probable joint interest in the other Receivership Entities. Given Leong's probable interest in the Receivership Entities, we fail to see any abuse of discretion in the trial court's decision to appoint a receiver to protect Leong's interests from the danger they faced as a result of Havens's misconduct before the FCC.

Nor is Havens correct in asserting the only basis for certifying the qualifications issue to the Commission was ALJ Sippel's conclusion that a motion for summary decision was filed in disregard of prior orders.[17] Subdivision (f) of the federal regulation

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[16] Havens's insistence that due process entitles him to an evidentiary hearing to resolve conflicts in the evidence is wholly unsupported by any citation to the record showing the existence of such a conflict. Thus, we do not consider the argument further.

[17] Havens asserts this portion of the Sippel Order is unsupported and unlikely to withstand review.

governing summary decisions in FCC hearings (47 C.F.R. § 1.251 (2017)) provides, in relevant part: "The presiding officer may take any action deemed necessary to assure that summary decision procedures are not abused. He may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay. [¶] . . . [¶] (3) If, on making such determination, the presiding officer concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, *he will certify the matter to the Commission*, with his findings and recommendations, *for a determination as to whether the facts warrant addition of an issue as to the character qualifications of that party*." (Italics added.) However, Havens cites no authority supporting the notion that this is the *only* avenue for the Commission to consider character qualifications. In fact, section 312(a) of title 47 of the United States Code provides: "The Commission may revoke any station license or construction permit—[¶] . . . [¶] (2) *because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application*; [¶] . . . [¶] (4) for willful or repeated violation of, or *willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission* authorized by this Act . . . ." (Italics added.) In the Sippel Order, the ALJ found numerous instances of misconduct that appear to satisfy these conditions—instances of misconduct that are entirely undisputed by Havens.

C. *Availability of Alternative Remedies*

Havens also claims less intrusive remedies were available and improperly rejected by the trial court. Specifically, he asserts the harm to be remedied by the Receivership Order could have been avoided by enjoining Havens from appearing pro se before the FCC. " '[T]he availability of other remedies does not, in and of itself, preclude the use of a receivership.' " (*Gold v. Gold, supra,* 114 Cal.App.4th at p. 807; *City and County of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) "Rather, a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." (*Daley*, at p. 745.) The record before us shows that the trial court properly considered alternative remedies before exercising its

discretion to appoint a receiver. The Sippel Order itself recognized, "[Havens has] engag[ed] in contemptuous conduct even when represented by counsel. Several attorneys have represented [Havens] or the Havens companies in the course of this proceeding, but no one has successfully restrained [his] disruptive influence." We, like the trial court, are not persuaded an injunction alone would adequately protect Leong's interests.

D. *Settlement Coercion*

Finally, we reject Havens's contention the Receivership Order was an impermissible attempt to compel the parties to settle. "[W]hile the trial court may direct litigants to engage in settlement negotiations, it may not compel litigants to settle a case. [Citations.] It therefore follows that the trial court may not use the threat of sanctions . . . to coerce the parties to reach a settlement." (*Barrientos v. City of Los Angeles* (1994) 30 Cal.App.4th 63, 72 (*Barrientos*), fn. omitted.) Thus, it is improper for a court to use its power to impose monetary sanctions as a tool to coerce a settlement. (*Id.* at pp. 71–72; *Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App.4th 1415, 1423 (*Triplett*).)

Havens's reliance on the above authority is misplaced. Here, unlike in *Barrientos* or *Triplett*, the trial court did not impose any sanction on Havens or his counsel *because* he failed or refused to settle the underlying suit. (*Barrientos*, *supra*, 30 Cal.App.4th at p. 67, *Triplett*, *supra*, 24 Cal.App.4th at p. 1422.) Leong's motion for appointment of a receiver was granted on the merits. Havens primarily relies on Judge Roesch's statements at a hearing on October 1, 2015, when he had *already* granted the motion for appointment of a receiver but was informed the arbitration was still in process. Judge Roesch said, "What am I supposed to do? I try to get you people to settle—I mean, this case started 13 years ago. 13 years. And it was put into arbitration, [which is] a speedy and inexpensive dispute-resolution process. And here we are at 13 years later, and quite frankly, if you'd been in court, you would have been done at minimum eight years ago, probably even longer. But we have what we have. [¶] . . . And I'm taking the matter under submission."

We cannot fault the trial court for expressing dismay at the resources consumed by the parties' intractable dispute. Our review of the record does not show coercion by the

trial court. Rather, the trial court concluded the Receivership Order was supported by the facts and law and merely afforded the litigants a few weeks to resolve their issues before formal entry of the order.

III. DISPOSITION

The Receivership Order is affirmed. Leong shall recover his costs on appeal.

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BRUINIERS, J.

WE CONCUR:

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SIMONS, Acting P. J.

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NEEDHAM, J.

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