

MAY - 3 2019

At 9:52 P.M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-17-006885

SANDRA CLAUDIA PANTOJA	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
EMERIE CUSTOM HOMES, INC.	§	
<i>Defendant.</i>	§	459 <sup>th</sup> JUDICIAL DISTRICT

**Amended Order Requiring Turnover and Appointing Receiver**

The Court considered the Application for Post-Judgment Turnover and Appointment of Receiver (“Application”) filed by Plaintiff. The Court entered a final judgment in the amount of \$81,474.61, plus post-judgment interest and costs, against Emerie Custom Homes, Inc. (“Defendant”). The judgment remains unpaid. Based on the entire record, including the Application and evidence attached that is admitted in support of the Application, the Court finds that the Application should be granted. The Court finds that the Defendant owns non-exempt property. Accordingly, it is **ORDERED**:

1. The Application is granted.
2. Receiver Appointed. Under Chapter 31 of the Texas Civil Practice and Remedies Code, Peter C. Ruggero, whose address is 1411 West Ave. Ste 200, Austin, Texas, tel. 512-473-8676, peter@ruggierolaw.com, is appointed Receiver.
3. Custodia Legis. The entry of this Order creates a receivership estate wherein all of Defendant’s non-exempt property shall be held in custodia legis by the receivership as of the date of this Order. The receivership owns all non-exempt property of Defendant, regardless of whether Receiver takes actual possession of the property.
4. Turnover. Defendant shall turnover to Receiver all non-exempt property, including documents related to such property, within five days. All third parties in possession of Defendant’s non-exempt property that is subject to Defendant’s control shall turnover such property to Receiver within five days. The turnover by Defendant shall include the following documents for the past 24 months: (1) canceled checks; (2) bank statements; pass books and other bank or financial institution records; (3) federal income and state franchise tax returns; (4) life insurance policies; (5) all motor vehicle Certificates of Title; (6) stock certificates and bonds; (7) promissory notes; (8) bills of sale; (9) real property deeds and deeds of trust (regardless of date); (10) business journals, ledgers, accounts payable and receivable files; (11) pledges, security agreements and copies of financial statements; (12) state sales tax reports; (13) any other record or document evidencing any ownership to real or personal property or to any debt owed or

money had (regardless of date); (14) trust documents for which Defendant is a beneficiary; (15) all personal property returns filed with any taxing authority, including but not limited to any central appraisal district or tax assessor/collector; (16) all documents listing or summarizing property owned by Defendant for the preceding 72 months; and (17) credit applications and other documents stating debtors' financial condition for the preceding 36 months.

5. Continuing Effect of Order. Defendant and others holding non-exempt property of Defendant shall continue to immediately turnover to Receiver such property when received, until all amounts due under the judgment and this Order are paid in full.

6. Receiver's Powers. Receiver has the authority to take possession of all of Defendant's nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment. Receiver's authority applies, but is not limited to, the following non-exempt property of Defendant: (1) all documents or records, including financial records, related to property that is in the actual or constructive possession or control of the Defendant; (2) all financial accounts (bank account), certificates of deposit, money-market accounts, accounts held by any third party; (3) all securities; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action or choses of action; (9) contract rights, whether present or future; (10) shares, stock and membership interests; (11) trusts, (12) domains, and (13) accounts receivable. Receiver is not required to defend or prosecute any litigation regarding Defendant. Receiver's powers include the following, although he has no requirement to necessarily exercise such powers: (1) collecting all accounts receivable of Defendant; (2) changing locks to all premises at which any property is situated; (3) endorsing and cash all checks and negotiable instruments payable to Defendant, except paychecks for current wages; (4) hiring a real estate broker to sell any real property and mineral interest belonging to the Defendant; (5) hiring any person or company to move and store the property of Defendant; (6) insuring any property belonging to the Defendant; (7) obtaining from any financial institution, bank, credit union, or savings and loan any financial records belonging to or pertaining to the Defendant; (8) obtaining local, state and federal tax records of Defendant; (9) obtaining from any landlord, building owner or building manager where the Defendant or the Defendant's business is a tenant copies of the Defendant's lease, lease application, credit application, payment history and copies of Defendant's checks for rent or other payments; (10) hiring any person or company necessary to accomplish any right or power under this Order; (11) taking all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Defendant may be situated, and to review and obtain copies of all documents related to same; (12) obtaining all records of ownership of real properties, personal properties or motor vehicles of Defendant in the possession of any County Tax Assessor/Collector or Central Appraisal District, including any records of payments made or correspondence; (13) obtaining all records pertaining to Defendant from any provider

of utilities, telephone service, cell phone service; (14) obtaining credit reports on the Defendant from any Consumer Reporting Agency as defined by Fair Credit Report Act pursuant to 16 USC §1681B(a)(1); (15) exercising control over any website of Defendant and direct the administrator or web server to allow Receiver full access to the management of the website; (16) obtaining from any creditor of Defendant (including mortgage companies) copies of the Defendant's credit application, payment history and copies of Defendant's checks for payments; and (17) obtaining from any person or entity that compensates Defendant, including commissions, an itemization of all such compensation for the past 12 months from the date of request and as well as any compensation anticipated in the forthcoming six month period from the date of request.

7. Duty of Members, Officers and Directors of Company. Each member, officer and director of Defendant Emerie Custom Homes, Inc. shall cooperate with Receiver and provide the property and documents ordered herein.

8. Duties of Law Enforcement. Any Sheriff, Constable or Officer of the Peace shall assist the Receiver in carrying out his duties and exercising his powers under this Order and prevent any person from interfering with Receiver in taking control and possession of Defendant's non-exempt property.


9. Sales of Property Require Notice. Any sale of property by Receiver requires the approval of this Court, after notice and opportunity for hearing being provided to Defendant and any lien holder on such ~~real~~ property.

10. Receiver's Bond and Oath. No bond is required of the Receiver. Receiver shall take the oath of his office.

11. Receiver's Fee. The Receiver shall hold in trust an amount equal to 25% of all proceeds coming into his possession (before deducting expenses incurred). The Receiver shall pay Plaintiff the remaining proceeds coming into his possession, either as such proceeds come into the Receivership, or periodically, as the Receiver may deem appropriate. The Court finds an amount not exceeding 25% of all proceeds is a customary and usual fee for a post-judgment turnover receiver. The Receiver's fees shall be determined, after notice and hearing, by the Court. The Receiver's fees and expenses are taxed as costs against the Defendant, and as costs, such fees and expenses are in addition to amounts owed under the judgment in this case.

12. Exempt Property. Nothing in this Order shall be construed to apply to exempt property, if any, of Defendant.

Signed on May 3, 2019

  
Judge Presiding