

CAUSE NO. DC-20-15745

MSP IDD I, LLC, independently and on behalf of BRECKENRIDGE GROUP WAXAHACHIE TEXAS, LP,

Judgment-Creditor,

v.

ASPEN HEIGHTS CONSTRUCTION, LLC

Judgment-Debtor.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

192ND JUDICIAL DISTRICT

ORDER APPOINTING TURNOVER RECEIVER

CAME ON to be heard the Motion for Turnover Order and Appointment of Receiver (the “Motion”) filed by Judgment-Creditor MSP IDD I, LLC, independently and on behalf of Breckenridge Group Waxahachie Texas, LP (“MSP IDD” or “Judgment-Creditor”); whereupon, the Court, after review of the papers on file in this cause, became of the opinion that a Receiver should be appointed to take possession of and sell the leviabale assets of Judgment-Debtor Aspen Heights Construction, LLC (“Aspen Construction” or “Judgment-Debtor”).

Based on the pleadings, the evidence presented at the hearing on the Motion, the representations of counsel, and the papers on file in this cause, the Court finds: (1) MSP IDD, on behalf of Breckenridge Group Waxahachie Texas, LP (“Breckenridge”), obtained a judgment against Aspen Construction in the amount of \$7,231,6000 in liquidated damages due to Breckenridge and \$733,142.76 in attorneys’ fees and costs due to MSP IDD (the “Judgment”); (2) the Judgment is valid, subsisting, and unsatisfied; (3) Aspen Construction owns non-exempt property, including without limitation, accounts receivable and causes of action more particularly described in the Motion; (4) Aspen Construction has not made any voluntary payments on the Judgment; (5) a Receiver is necessary to assist in collecting the Judgment because,

without limitation, Aspen Construction has admitted to transferring its revenues to affiliates, there are likely causes of action against such affiliates, Aspen Construction is unlikely to bring causes of action against its insiders and affiliates for the benefit of MSP IDD, and MSP IDD has been unable to recover any amounts toward the Judgment by traditional means; (6) MSP IDD has satisfied the burden of proving its entitlement to turnover and the appointment of a Receiver under the Turnover Statute; and (7) Aspen Construction had adequate notice of MSP IDD's request for relief in the Motion, and the hearing thereon.

IT IS THEREFORE ORDERED that **Peter C. Ruggero, whose address is 1411 West Avenue, Suite 200, Austin, Texas 78701 (telephone number 512-473-8676; fax 512-852-4407) be, and he is hereby appointed, Receiver** in this case pursuant to Section 31.002 of the Texas Civil Practice and Remedies Code (the "Turnover Statute") with the power and authority to take possession of and sell all non-exempt property of Aspen Construction through a private or public sale, including, but not limited to the following non-exempt property (the "Turnover Property"): (1) all documents or records, including financial records, related to such property that is in the actual or constructive possession or control of Aspen Construction; (2) all financial accounts (bank accounts), certificates of deposit, money-market accounts, or other accounts held by any third party for the benefit of Aspen Construction and subject to Aspen Construction's control; (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) all causes of action and choses of action, including without limitation any causes of action against Aspen Construction's affiliates, insiders, managers, officers, or other third parties arising from transfers or distributions of Aspen Construction's revenues, cash, or other property, and any causes of action for breach of fiduciary duties or conspiracy to breach fiduciary duties; (9) judgments; (10) contract rights, whether present or future; (11) all accounts receivable; and (12) intangible property and property rights, including but not limited to intellectual property rights such

as internet domains, patents, copyrights and trademarks; and that all such property shall be held *in custodia legis* of said Receiver as of the date of this Order.

Aspen Construction is **ORDERED** to turnover to the Receiver within five (5) days from receipt of a copy of this Order: (1) the documents contained on **Exhibit "A"** attached hereto, together with all documents and financial records which may be requested by the Receiver; (2) all checks, cash, securities (stocks and bonds), promissory notes, documents of title, and contracts owned by or in the name of Aspen Construction; and (3) the Turnover Property more particularly described in this Order.

Aspen Construction is **ORDERED** to identify and turn over to the Receiver all interests of Aspen Construction in any business or venture and all agreements, stock certificates and other documents pertaining to Aspen Construction's ownership in the business or venture within five (5) days from Aspen Construction's receipt of a copy of this Order.

This Order constitutes a Charging Order under the Texas Business Organizations Code. This Order constitutes a lien upon Aspen Construction's partnership interest in any partnership and Aspen Construction's membership interest in any limited liability company. The Receiver has the right to receive any distribution to which Aspen Construction would be entitled from Aspen Construction's partnership or membership interest.

Aspen Construction is **ORDERED** to continue, until the Judgment is fully paid, to turnover to the Receiver at the Receiver's address all checks, cash, securities, promissory notes, documents of title, contracts, and any other Turnover Property, within three (3) days of Aspen Construction's receipt of such property, if, as and when Aspen Construction receives or comes into possession of such property.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to Aspen Construction's property (including the Turnover Property), to: (1) collect all accounts receivable of Aspen Construction and all rents due to Aspen

Construction from any tenant; (2) change locks to all premises at which any of Aspen Construction's property is situated; (3) direct the delivery of Aspen Construction's mail and the mail of any business of Aspen Construction to the Receiver's address and open all mail directed to Aspen Construction and any business of Aspen Construction; (4) endorse and cash all checks and negotiable instruments payable to Aspen Construction; (5) hire a real estate broker to sell any real property or mineral interest belonging to Aspen Construction; (6) hire any person or company to move and store the property of Aspen Construction; (7) to insure any property belonging to Aspen Construction; *provided, however*, the Receiver has no obligation to insure any property; (8) obtain from any financial institution, bank, credit union, credit bureau, savings and loan, title company, or any other third party, any financial records, including credit reports belonging to or pertaining to Aspen Construction; (9) obtain from any landlord, building owner or building manager where Aspen Construction or Aspen Construction's business is a tenant copies of Aspen Construction's lease, lease application, credit application, payment history and copies of Aspen Construction's checks for rent or other payments; (10) file and prosecute any causes of action on behalf of Aspen Construction; (11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Aspen Construction may be situated, and to review and obtain copies of all documents related to same; (12) obtain all records of ownership of real properties, personal properties, or motor vehicles of Aspen Construction from any County Tax Assessor, Tax Collector, Central Appraisal District, or similar state or federal taxing agency, including any records of any tax payments or related correspondence; (13) obtain all records pertaining to Aspen Construction from any provider of utilities, telephone service, or cell phone service, the Court finding that the requirements of Section 182.054(1) and PUC Substantive Rule 25.272(g)(1) permit the disclosure to the Receiver as an officer of the Court and acting on behalf of Aspen Construction in all respects; (14) to obtain credit reports or similar information on Aspen Construction

from any credit reporting agency or similar provider of credit and asset information; (15) exercise control over any website of Aspen Construction and direct the administrator or web server to allow the Receiver full access to the management of the website; (16) to obtain from any creditor of Aspen Construction (including any lender, bank, or financial institution that has loaned funds to Aspen Construction or any of its affiliates) copies of Aspen Construction's credit application, payment history and copies of Aspen Construction's checks for payments; (17) obtain from any company that insures or has insured Aspen Construction, including but not limited to any directors and officers insurance or similar coverage, any application for insurance submitted by or on behalf of Aspen Construction, any email or letter correspondence from or on behalf of Aspen Construction, audit reports for Aspen Construction, any audit billings for Aspen Construction, any certificates of insurance evidencing Aspen Construction's coverage, any premium payment history of Aspen Construction and any copies of Aspen Construction's checks for premium payments or other information that would show the financial institution from which any payment was made by or for Aspen Construction; (18) obtain from any customer or client of Aspen Construction (a) all records of payment by said customer to Aspen Construction for the 180 days preceding the request, (b) any information about pending orders with Aspen Construction, (c) any information about accounts payable due to Aspen Construction at the time of the request and the following 90 days, and (d) any information about bank accounts for Aspen Construction as well as payment instructions from Aspen Construction; and (19) hire any person or company necessary to accomplish any right or power under this Order.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, satellite television services, and all similar services, (including without limitation Time Warner / Spectrum, Frontier, AT&T, Verizon, Sprint,

Satellite TV, Direct TV, EV1, Google, Yahoo, and internet blogs and chat rooms) the production of any information regarding the Aspen Construction's payments, payment history and financial information, including account information, telephone numbers, names, service addresses, telephone numbers, IP addresses, call detail records, payment records, and bank and credit card information. This Order serves as the court order required by 47 U.S.C. § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

The Receiver shall have the power and authority to take control of Aspen Construction's website by transferring Aspen Construction's domain names to the receiver's Domain name management account. This Order specifically serves as the court order required by Section 3(b) of the ICANN Uniform Domain Name Dispute Resolution Policy, and satisfies all obligations of the Receiver to obtain and receive a court order prior to changing and transferring the domain name registrations in Aspen Construction's name.

All Sheriffs or Constables, and their deputies, and all other peace officers, are hereby ordered to assist the Receiver in carrying out his duties and exercising his powers hereunder and prevent any person from interfering with the Receiver in taking control and possession of the property of Aspen Construction (including the Turnover Property), without the necessity of a Writ of Execution. The Receiver is authorized to have a writ of execution issued and to direct any Constable or Sheriff to seize and sell property under the writ.

Requests for information made by the Receiver to Aspen Construction, its members, officers, managers, employees, or agents shall have the power of subpoena under Texas law and failure to comply with such a request from the Receiver may be treated by the Court as a contempt of Court. The Receiver also has the authority to issue subpoenas for the production of documents to third parties.

All of Aspen Construction's members, officers, managers, employees, or agents, and all other persons under the control of Aspen Construction, are ordered to assist the Receiver in carrying out the powers enumerated herein, including but not limited to identifying the location of financial documents, the identity of debtors of Aspen Construction, the location of all financial accounts of Aspen Construction, and the identity and location of any Turnover Property.

This Order constitutes authority for Receiver to collect from the Texas Comptroller of Public Account, Unclaimed Property Division, any funds held in the name of Aspen Construction and said sums are ordered to be forwarded to Receiver by the Texas Comptroller upon receipt of this Order.

Any sale of real and personal property by Receiver requires the approval of this Court, after notice and opportunity for hearing being provided to MSP IDD, Aspen Construction, and any lien holder on such property.

Any settlement of a cause of action by Receiver requires the approval of this Court, after notice and opportunity for hearing being provided to MSP IDD and Aspen Construction.

It is further ~~ORDERED~~ that Applicant have and recover of and against Aspen Construction, judgment in the additional sum of \$_____ as additional attorney fees for the presentation of this motion.

It is further ~~ORDERED~~ the Receiver is / is not ordered to post bond in the amount of \$_____ payable to this Court and conditioned upon his faithful discharge of his duties in accordance with this Order. The Clerk may accept a check from the Receiver or the MSP IDD's attorney's firm for the bond, costs and other deposits.

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 MSP IDD 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 or by agreement of all the parties. The Receiver's fees and expenses are taxed as costs against Aspen Construction, and as costs, such fees and expenses are in addition to amounts owed under the judgment in this case. Receiver shall pay MSP IDD's attorney as trustee for MSP IDD the remaining proceeds coming into his possession.

The Receiver is further ordered to take the oath of his office.

SIGNED this _____ day of _____, 2021.

6/18/2021 9:38:31 AM



JUDGE PRESIDING

APPROVED AS TO FORM AND ENTRY:

BRADLEY ARANT BOULT CUMMINGS LLP

By: /s/ William S. Snyder

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**ATTORNEYS FOR JUDGMENT-
CREDITOR MSP IDD I, LLC
INDEPENDENTLY AND ON BEHALF
OF BRECKENRIDGE GROUP
WAXAHACHIE TEXAS, LP**

**EXHIBIT A TO RECEIVERSHIP ORDER
DOCUMENTS TO BE TURNED OVER TO RECEIVER**

Any and all records, as hereinafter described, concerning affairs of Aspen Heights Construction, LLC unless otherwise noted, from January 1, 2016 through the present:

1. All documents produced to Judgment-Creditor MSP IDD I, LLC in response to post-judgment discovery;
2. Canceled checks;
3. Bank statements, pass books and other bank or financial institution records;
4. Federal income and state franchise tax returns;
5. Insurance policies;
6. All motor vehicle or equipment Certificates of Title;
7. Stock certificates and bonds;
8. Real property deeds and deeds of trust (regardless of date);
9. Business journals, ledgers, accounts payable and receivable files;
10. Pledges, security agreements and copies of financial statements;
11. State sales tax reports;
12. Any other record or document evidencing any ownership of real or personal property or to any debt owed or money had (regardless of date);
13. All personal property returns filed with any taxing authority;
14. All documents listing or summarizing property owned by Aspen Heights Construction, LLC; and
15. Credit applications, financial statements, and other documents stating Aspen Heights Construction, LLC's financial condition, to the extent not already produced in post-judgment discovery.

STATE OF TEXAS }
COUNTY OF DALLAS }

I, FELICIA PITRE, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears on record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 22 day of June, A.D., 2021.

FELICIA PITRE, DISTRICT CLERK
DALLAS COUNTY, TEXAS
By Orfa Palacios Deputy
Orfa Palacios

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Madeleine Bourdon on behalf of William Snyder
Bar No. 786250
mbourdon@bradley.com
Envelope ID: 53721995
Status as of 5/25/2021 11:56 AM CST

Associated Case Party: MSP IDD I, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Benton Thomas Wheatley	24015171	btwheatley@duanemorris.com	5/24/2021 9:16:19 AM	SENT
Tracy Lynn Paczkowsk McCreight	24037064	TLMcCreight@duanemorris.com	5/24/2021 9:16:19 AM	SENT
James Bailey		jbailey@bradley.com	5/24/2021 9:16:19 AM	SENT
William Snyder		wsnyder@bradley.com	5/24/2021 9:16:19 AM	SENT

Associated Case Party: ASPEN HEIGHTS CONSTRUCTION, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
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