

ORIGINAL

1 GROVER TRASK
 2 District Attorney
 3 County of Riverside
 4 By Paul Fick, State Bar # 145914
 5 Deputy District Attorney
 6 4075 Main Street
 7 Riverside, California 92501
 8 Telephone: (909) 955-5400

FILED
 SUPERIOR COURT OF CALIFORNIA VIA
 COUNTY OF RIVERSIDE

SEP 28 2005

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF RIVERSIDE**

11
 12 THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. RIF 126145

13 Plaintiff,

ORDER APPOINTING TEMPORARY
 RECEIVER PURSUANT TO FINAL
 CODE § 186.11(a)(8)(9) FOR
 MOWBRAY'S TREE SERVICE; DENISE
 MOWBRAY'S TREE COMPANY INC;
 ARROWHEAD TREE SERVICE, INC;
 ARROWHEAD TREE COMPANY, INC;
 M.J. EQUIPMENT, LLC

14 v.

15 RICHARD EDWARD MOWBRAY
 16 DENISE LYNN MOWBRAY
 17 MOWBRAY'S TREE SERVICE
 18 DENISE MOWBRAY TREE COMPANY INC.
 19 ARROWHEAD TREE SERVICE, INC.
 ARROWHEAD TREE COMPANY, INC.
 M.J. EQUIPMENT, LLC

Defendants

20
 21 TO DEFENDANTS RICHARD EDWARD MOWBRAY, DENISE LYNN MOWBRAY
 22 AND DENISE MOWBRAY TREE COMPANY INC., TO THEIR ATTORNEYS OF RECORD
 23 HEREIN; AND EVERY PERSON WHO MAY HAVE AN INTEREST IN, OR CUSTODY OR
 24 CONTROL OVER, ANY PROPERTY OR ASSET MENTIONED HEREIN

25 Upon the application of the People and pursuant to this Court's authority under Penal Code
 26 §186.11,

IT IS HEREBY ORDERED THAT:

1 1. Robb Evans & Associates LLC, be and hereby is appointed Temporary Receiver of
2 the properties and businesses of Richard Edward Mowbray and Denise Lynn Mowbray, including
3 but not limited to Mowbray's Tree Service (# C2377654); Denise Mowbray Tree Company / Inc. (#
4 C2536893); Arrowhead Tree Service Inc. (# C2571567); Arrowhead Tree Company Inc. (#
5 C2699144) and M.J. Equipment (# 200406410210) during the pendency of this action, or until
6 further Order of this Court, subject to the condition that before entering upon his duties as
7 Temporary Receiver, he shall take the oath and file herein a bond, with sureties thereon as proved by
8 this Court, in the penal sum of \$10,000 conditioned upon the faithful performance of his duties as
9 Temporary Receiver (the "Temporary Receiver").

10 2. The Temporary Receiver shall have the following responsibilities and powers as
11 Temporary Receiver:

12 a. That after so qualifying, said Temporary Receiver shall take possession of
13 Mowbray's Tree Service (# C2377654); Denise Mowbray Tree Company Inc. (# C2536893);
14 Arrowhead Tree Service Inc. (# C2571567); Arrowhead Tree Company Inc. (# C2699144) and M.J.
15 Equipment (# 200406410210), (hereafter the "Business") and any and other businesses and
16 properties of the Defendants, including, but not limited to, accounts receivable, bank accounts,
17 contracts, franchise agreements, equipment, funds (including but not limited to cash on hand and
18 funds on deposit), instruments, machinery, tools, inventories, supplies, motor vehicles, trade name,
19 good will, stock of any subsidiaries, all other tangible and intangible personal property, choses in
20 action, real property, and all other assets of said Business.

21 b. That until further Order of this Court, the Temporary Receiver hereby is
22 authorized forthwith to take and have complete and exclusive control, possession and custody of the
23 Business' Assets and the Real Property, (collectively, the "Assets.")

24 c. That Richard Edward Mowbray, Denise Lynn Mowbray and Denise
25 Mowbray Tree Company Inc. the "Defendants," and any persons acting under their direction shall,
26 without the necessity of a demand of the Temporary Receiver, deliver to the Temporary Receiver
any and all of the Assets in their direct or indirect possession or under their direct or indirect control;
and that all persons are enjoined from: (i) in any way, directly or indirectly, affecting the Temporary

Receiver's possession of the Assets or access to the Assets and (ii) prosecuting any claims for relief or causes of action that affect the Assets.

4 d. That the Temporary Receiver be and hereby is authorized to exercise all of the rights, powers and duties of the officers and directors of the Business, with full authority to, if necessary, continue, manage and operate the Assets and the Business.

e. That the Temporary Receiver be and hereby is authorized in his discretion to employ and to pay for the services of such managers, agents, employees, servants, accountants, and attorneys as may in his judgment be advisable or necessary in the management, conduct, control or custody of the affairs of the Corporation and of the Assets.

0 f. That the Temporary Receiver be and hereby is authorized to incur debts, secured or unsecured, and to make such payments and disbursements as may be needful and proper for the preservation and the operation of the Business and of the Assets.

4 g. The Temporary Receiver may engage the services of professionals if necessary, and the Temporary Receiver is authorized to pay for such services from the funds of the Temporary Receivership estate (the Business). The Temporary Receiver is authorized to employ as his counsel the law firm of Frandzel Robins Bloom & Csato, L.C. That the Temporary Receiver be and hereby is authorized to receive and collect any and all sums of money due or owing to the Business in any manner whatsoever, whether the same are now due or shall hereafter become due and payable, and to do such things and enter into such agreements in connection with the management, care and preservation of the Assets as he may deem advisable, and to incur such expenses and make such disbursements as may in his judgment be advisable or necessary in connection with the care, preservation and maintenance of the Assets.

22 i. The Temporary Receiver may open and maintain such bank accounts as may
23 be necessary for the conduct of and preservation of the Temporary Receivership assets.
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25 j. That the Temporary Receiver may and hereby is authorized to institute,
26 prosecute and defend, compromise, adjust, intervene in or become party to such actions or proceedings in state or federal courts as may in his opinion be necessary or proper for the Assets or the carrying out of the terms of this Order, and likewise to defend, compromise or adjust or

otherwise dispose of any all actions or proceedings instituted against him as Temporary Receiver
or against the Business and also to appear in and conduct the defense of any suit or adjust or
3 compromise any actions proceedings now pending in any court by or against the Business where
4 such prosecution, defense or other disposition of such actions or proceedings will in the judgment of
the Temporary Receiver or advisable or proper for the protection of the Assets.

6 k. That the Defendants and each of them, their agents, employees, servants,
assigns, and persons acting in direct or indirect concert with them shall fully cooperate in turning
the Assets, including all books and records related thereto wherever located, to the Temporary
Receiver to the they have not already done so; and that prior to such turnover and thereafter,
pending further Order of this Court, said defendants, and each of them, shall take no action of any
kind behalf of the Business or the Assets.

The Temporary Receiver shall have thirty (30) working days after his qualification
hereunder to investigate and to determine whether or not there exists upon the Assets insurance
coverage and during such period said Temporary Receiver shall not be responsible for any claims
insurable under typical liability or property insurance or for the procurement of insurance. The
6 Temporary Receiver is authorized to obtain and pay for out of the Assets such insurance coverage as
may be necessary for the protection and preservation of the assets of the Temporary Receivership.

4. The Temporary Receiver shall, within thirty (30) days of his qualification hereunder,
file in this action inventory of all of the Assets which he shall have taken possession pursuant
20 hereto, and if he shall subsequently come into possession of additional Assets, he shall file a
supplemental inventory thereof.

22 In addition to the powers and duties stated below, the Temporary Receiver is vested
23 with all the usual powers, rights and duties of Temporary Receivers appointed by this Court or
24 otherwise defined by statute.

25 6. The Temporary Receiver is authorized and empowered to enforce and collect any
26 debts, accounts receivable, rents, or other obligations due the Business or the Defendants, and to
institute and prosecute, in his own name as such Temporary Receiver, suits for the enforcement and
recovery of the same; the Temporary Receiver is further authorized and empowered settle and

1 compromise any such obligations whenever, in his judgment, such compromise or settlement is in
2 the best interests of the parties involved in this action.

3 7. The Temporary Receiver is hereby authorized and empowered to discharge, adjust, or
4 settle, from the funds in his possession, all claims against or obligations of the Temporary
5 Receivership Estate arising from any prior or concurrent indebtedness of or owing or incurred by the
6 Temporary Receiver, including taxes, assessments, and other lawful charges against any property
7 held by the Temporary Receiver, on the terms and in such manner as he deems just and beneficial to
8 the Temporary Receivership Estate; provided, however, that in all cases of mutual debts or mutual
9 credits between, on the one hand, the Business and/or any of the Defendants and, on the other hand,
10 a creditor, the account shall be stated, the one debt set off against the other, and the balance only
11 shall be paid, settled, or otherwise discharged pursuant to this Order.

12 8. The Temporary Receiver shall be authorized to prepare periodic statements reflecting
13 the Temporary Receiver's fee and fees of professionals and administrative and management costs
14 incurred for said period in the operation and administration of the Temporary Receivership herein.
15 Upon completion of said interim statement, and mailing a copy to the parties' respective attorneys of
16 record or any other designated person or agent, The Temporary Receiver shall pay from estate
17 funds, if any, the amount of said statements. Said periodic payment of Temporary Receiver's fees,
18 and administrative expenses, shall be submitted to the court on a quarterly basis for its approval and
19 conformation, in the form of either a noticed interim request for fees, a Stipulation among all the
20 parties, or the Temporary Receiver's Final Account and Report.

21 9. The Temporary Receiver is empowered and authorized to take possession and receive
22 any money on deposit, to the credit of or for the benefit of the Business and the Defendants. The
23 receipt of the Temporary Receiver of such funds shall release the holder of such funds from all
24 further responsibility for accounting for said funds.

25 10. Monies coming into possession of the Temporary Receiver and not expended for any
26 purpose herein authorized shall be held by the Temporary Receiver subject to such Orders of this
Court as to disbursement to the parties in this action.

11. Notwithstanding anything in this Order, the Temporary Receiver may do anything

1 necessary to enable him to perform the duties imposed on him by this Order, or as authorized by
2 California Code of Civil Procedure sections 568-569.

3 IT IS FURTHER ORDERED that during the pendency of the Temporary Receivership, the
4 Defendants and Mowbray's Tree Service (# C2377654); Denise Mowbray Tree Company Inc.
5 (# C2536893); Arrowhead Tree Service Inc. (# C2571567); Arrowhead Tree Company Inc.
6 (# C2699144) and M.J. Equipment (# 200406410210) and their employees, servants, agents,
7 representatives, and each of them, and all persons acting by, through, in concert, in aid of, or in
8 conjunction with any of them, are enjoined and restrained during the pendency of this action from
9 engaging in, doing, or attempting to do, committing, performing or causing to be done, either
10 directly or indirectly, by any means, methods, or devices whatsoever, any of the following acts:

- 11 a. Selling, assigning, transferring, hypothecating, or otherwise disposing of any
12 assets;
- 13 b. Making any false or inaccurate entries in the accounts, books, and records of
14 the Defendants, the Business, their respective businesses or the Assets;
- 15 c. Failing to make proper entries in the accounts, books, and records of the
16 Defendants, the Business, their respective businesses or the Assets;
- 17 d. Paying to any trade creditor, or any person, trust funds, or sums derived from
18 the misappropriation of trust funds or funds held on behalf of or for the benefit of any third party;
- 19 e. Interfering in any way with the Temporary Receiver in carrying out his duties
20 as such Temporary Receiver under this Order.

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24 Dated: 9/23/05

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Judge of the Superior Court