

ORIGINAL

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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF RIVERSIDE
13 (RIVERSIDE)
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15
16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA,

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19 Plaintiff,

20 v.

21
22 CARTER LEE PENDERGRASS
23 JOSHUA LEE PENDERGRASS
24 PHILLIP TIMOTHY CASSIDY
25 KAREN JEAN CASSIDY
26 AKA KAREN MCCOLLUM
27

28 Defendants.
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Case No. RIF135369

ORDER APPOINTING TEMPORARY
RECEIVER PURSUANT TO PENAL
CODE § 186.11(g) (8) (9) FOR PENCA
CAPITAL INC. AND TOTAL FRAMING
INC.

30 TO DEFENDANTS CARTER LEE PENDERGRASS, JOSHUA LEE PENDERGRASS,
31 PHILLIP TIMOTHY CASSIDY and KAREN JEAN CASSIDY AKA KAREN MCCOLLUM,
32 AND TO THEIR ATTORNEYS OF RECORD HEREIN; AND EVERY PERSON WHO MAY
33 HAVE AN INTEREST IN, OR CUSTODY OR CONTROL OVER, ANY PROPERTY OR ASSET
34 MENTIONED HEREIN
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1 Upon the application of the People and pursuant to this Court's authority under Penal Code
2 §186.11,

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4 IT IS HEREBY ORDERED THAT:

5 Robb Evans & Associates LLC, be and hereby is appointed Temporary Receiver of the
6 properties and businesses of CARTER LEE PENDERGRASS, JOSHUA LEE PENDERGRASS,
7 PHILLIP TIMOTHY CASSIDY AND KAREN JEAN CASSIDY AKA KAREN MCCOLLUM,
8 including but not limited to PENCA CAPITAL INC (# C2773407) and TOTAL FRAMING INC
9 (#C2860090) during the pendency of this action, or until further Order of this Court, subject to the
10 condition that before entering upon his duties as Temporary Receiver, he shall take the oath and file
11 herein a bond, with sureties thereon approved by this Court, in the penal sum of \$10,000 conditioned
12 upon the faithful performance of his duties as Temporary Receiver (the "Temporary Receiver").
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15 The Temporary Receiver shall have the following responsibilities and powers as Temporary
16 Receiver:
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18 That after so qualifying, said Temporary Receiver shall take possession of PENCA
19 CAPITAL INC (# C2773407) and TOTAL FRAMING INC (#C2860090) and any other businesses
20 and properties of the Defendants, including, but not limited to, accounts receivable, bank accounts,
21 contracts, franchise agreements, equipment, funds (including but not limited to cash on hand and
22 funds on deposit), instruments, machinery, tools, inventories, supplies, motor vehicles, trade name,
23 good will, stock of any subsidiaries, all other tangible and intangible personal property, chooses in
24 action, real property, and all other assets of said Business.
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28 That until further Order of this Court, the Temporary Receiver hereby is authorized
29 forthwith to take and have complete and exclusive control, possession and custody of the Business'
30 Assets and the Real Property, (collectively, the "Assets.")
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32 That CARTER LEE PENDERGRASS, JOSHUA LEE PENDERGRASS, PHILLIP
33 TIMOTHY CASSIDY And KAREN JEAN CASSIDY AKA KAREN MCCOLLUM," and any
34 persons acting under their direction shall, without the necessity of a demand of the Temporary
35 Receiver, deliver to the Temporary Receiver any and all of the Assets in their direct or indirect
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1 possession or under their direct or indirect control; and that all persons are enjoined from: (i) in any
2 way, directly or indirectly, affecting the Temporary Receiver's possession of the Assets or access to
3 the Assets and (ii) prosecuting any claims for relief or causes of action that affect the Assets.
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5 That the Temporary Receiver be and hereby is authorized to exercise all of the rights,
6 powers and duties of the officers and directors of the Business, with full authority to, if necessary,
7 continue, manage and operate the Assets and the Business.
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9 That the Temporary Receiver be and hereby is authorized in his discretion to employ
10 and to pay for the services of such managers, agents, employees, servants, accountants, and
11 attorneys as may in his judgment be advisable or necessary in the management, conduct, control or
12 custody of the affairs of the Corporation and of the Assets.
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14 That the Temporary Receiver be and hereby is authorized to incur debts, secured or
15 unsecured, and to make such payments and disbursements as may be needful and proper for the
16 preservation and the operation of the Business and of the Assets.
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18 The Temporary Receiver may engage the services of professionals, if necessary, and
19 the Temporary Receiver is authorized to pay for such services from the funds of the Temporary
20 Receivership estate (the Business). The Temporary Receiver is authorized to employ as his counsel
21 the law firm of Frandzel Robins Bloom & Csato, LC. That the Temporary Receiver be and hereby is
22 authorized to receive and collect any and all sums of money due or owing to the Business in any
23 manner whatsoever, whether the same are now due or shall hereafter become due and payable, and
24 to do such things and enter into such agreements in connection with the management, care and
25 preservation of the Assets as he may deem advisable, and to incur such expenses and make such
26 disbursements as may in his judgment be advisable or necessary in connection with the care,
27 preservation and maintenance of the Assets.
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29 i. The Temporary Receiver may open and maintain such bank accounts as may
30 be necessary for the conduct of and preservation of the Temporary Receivership assets.
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32 That the Temporary Receiver may and hereby is authorized to institute, prosecute and
33 defend, compromise, adjust, intervene in or become party to such actions or proceedings in state or
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1 federal courts as may in his opinion be necessary or proper for the Assets or the carrying out of the
2 terms of this Order, and likewise to defend, compromise or adjust or otherwise dispose of any or all
3 actions or proceedings instituted against him as Temporary Receiver or against the Business and also
4 to appear in and conduct the defense of any suit or adjust or compromise any actions or proceedings
5 now pending in any court by or against the Business where such prosecution, defense or other
6 disposition of such actions or proceedings will in the judgment of the Temporary Receiver be
7 advisable or proper for the protection of the Assets.
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10 That the Defendants and each of them, their agents, employees, servants, assigns, and
11 persons acting in direct or indirect concert with them shall fully cooperate in turning over the Assets,
12 including all books and records related thereto wherever located, to the Temporary Receiver to the
13 extent they have not already done so; and that prior to such turnover and thereafter, pending further
14 Order of this Court, said defendants, and each of them, shall take no action of any kind on behalf of
15 the Business or the Assets.
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18 The Temporary Receiver shall have thirty (30) working days after his qualification hereunder
19 to investigate and to determine whether or not there exists upon the Assets insurance coverage and
20 during such period said Temporary Receiver shall not be responsible for any claims insurable under
21 typical liability or property insurance or for the procurement of insurance. The Temporary Receiver
22 is authorized to obtain and pay for out of the Assets such insurance coverage as may be necessary for
23 the protection and preservation of the assets of the Temporary Receivership.
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26 The Temporary Receiver shall, within thirty (30) days of his qualification hereunder, file in
27 this action an inventory of all of the Assets which he shall have taken possession pursuant hereto,
28 and if he shall subsequently come into possession of additional Assets, he shall file a supplemental
29 inventory thereof.
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32 In addition to the powers and duties stated below, the Temporary Receiver is vested with all
33 the usual powers, rights and duties of Temporary Receivers appointed by this Court or otherwise
34 defined by statute.
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1 The Temporary Receiver is authorized and empowered to enforce and collect any debts,
2 accounts receivable, rents, or other obligations due the Business or the Defendants, and to institute
3 and prosecute, in his own name as such Temporary Receiver, suits for the enforcement and recovery
4 of the same; the Temporary Receiver is further authorized and empowered to settle and compromise
5 any such obligations whenever, in his judgment, such compromise or settlement is in the best
6 interests of the parties involved in this action.
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9 The Temporary Receiver is hereby authorized and empowered to discharge, adjust, or settle,
10 from the funds in his possession, all claims against or obligations of the Temporary Receivership
11 Estate arising from any prior or concurrent indebtedness of or owing or incurred by the Temporary
12 Receiver, including taxes, assessments, and other lawful charges against any property held by the
13 Temporary Receiver, on the terms and in such manner as he deems just and beneficial to the
14 Temporary Receivership Estate; provided, however, that in all cases of mutual debts or mutual
15 credits between, on the one hand, the Business and/or any of the Defendants and, on the other hand,
16 a creditor, the account shall be stated, the one debt set off against the other, and the balance only
17 shall be paid, settled, or otherwise discharged pursuant to this Order.
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21 The Temporary Receiver shall be authorized to prepare periodic statements reflecting the
22 Temporary Receiver's fee and fees of professionals and administrative and management costs
23 incurred for said period in the operation and administration of the Temporary Receivership herein.
24 Upon completion of said interim statement, and mailing a copy to the parties' respective attorneys of
25 record or any other designated person or agent, The Temporary Receiver shall pay from Estate
26 funds, if any, the amount of said statements. Said periodic payment of Temporary Receiver's fees,
27 and administrative expenses, shall be submitted to the court on a quarterly basis for its approval and
28 conformation, in the form of either a noticed interim request for fees, a Stipulation among all the
29 parties, or the Temporary Receiver's Final Account and Report.
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33 The Temporary Receiver is empowered and authorized to take possession and receive any
34 money on deposit, to the credit of or for the benefit of the Business and the Defendants. The receipt
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1 of the Temporary Receiver of such funds shall release the holder of such funds from all further
2 responsibility for accounting for said funds.
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4 Monies coming into possession of the Temporary Receiver and not expended for any purpose
5 herein authorized shall be held by the Temporary Receiver subject to such Orders of this Court as to
6 disbursement to the parties in this action.
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8 11. Notwithstanding anything in this Order, the Temporary Receiver may do anything
9 necessary to enable him to perform the duties imposed on him by this Order, or as authorized by
10 California Code of Civil Procedure sections 568-569.
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12 IT IS FURTHER ORDERED that during the pendency of the Temporary Receivership, the
13 Defendants and PENCA CAPITAL INC (# C2773407) and TOTAL FRAMING INC (#C2860090)
14 and their employees, servants, agents, representatives, and each of them, and all persons acting by,
15 through, in concert, in aid of, or in conjunction with any of them, are enjoined and restrained during
16 the pendency of this action from engaging in, doing, or attempting to do, committing, performing or
17 causing to be done, either directly or indirectly, by any means, methods, or devices whatsoever, any
18 of the following acts:
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20 a. Selling, assigning, transferring, hypothecating, or otherwise disposing of any
21 assets;
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23 b. Making any false or inaccurate entries in the accounts, books, and records of
24 the Defendants, the Business, their respective businesses or the Assets;
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26 c. Failing to make proper entries in the accounts, books, and records of the
27 Defendants, the Business, their respective businesses or the Assets;
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29 d. Paying to any trade creditor, or any person, trust funds, or sums derived from
30 the misappropriation of trust funds or funds held on behalf of or for the benefit of any third party;
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1 e. Interfering in any way with the Temporary Receiver in carrying out his duties
2 as such Temporary Receiver under this Order.
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8 Dated: 03.08.07
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12 Judge of the Superior Court
13 Michele D. Levine
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