

4. This application follows countless attempts to gain plaintiff's cooperation and compliance with reasonable procedures put in place to control the disbursement of Partnership funds.

5. A copy of this application has been emailed to the attorneys for plaintiff and defendant, in addition to being filed under the Court's e-File system.

6. I have, through my counsel and directly by myself, spoken and communicated with the parties and their lawyers this week, all in an effort to avoid making this application. Unfortunately, we have reached the point that this application is necessary. The relief I am seeking is narrowly tailored to enforce the Court's prior Order establishing a receivership and to prevent the unauthorized dissipation of the assets of the Partnerships.

7. This Tuesday, after weeks and more of efforts by me and my accountants to obtain from plaintiff his cooperation with my disbursement Protocols (described further below) and to obtain from plaintiff the back-up material for expenditures he made without my approval, I set a "final deadline" of 4:00 p.m. Wednesday (yesterday). By that point, he was to deliver what my accountants have repeatedly requested.

8. Plaintiff finally sent information yesterday, but what he has provided is too little, and comes too late – and the information he has delivered leaves unanswered many questions regarding his unauthorized and highly questionable disbursements of Partnership funds.

9. Just by way of example, the materials produced by plaintiff yesterday appear to indicate disbursements charged to the Partnerships to cover plaintiff's costs

relating to his establishment of a new competing law office in Melville, New York – including \$5,000 paid to a lawyer to handle the closing on the new building. The materials also confirm his stay at a lavish Palm Beach resort charged to the Partnerships – but give no business justification for the trip (which we suspect was personal).

10. The fact is that plaintiff’s ability to suddenly produce back-up materials for his purchases, to meet my “final deadline” of 4:00 p.m. yesterday, shows that, if he had wanted to, plaintiff easily could have produced the requested information weeks ago. It appears plaintiff delayed producing the back-up material because he knows that it only confirms his expenditures were inappropriately charged to the Partnerships.

11. The bottom line is that despite my issuance of standing rules prohibiting any disbursements without my prior approval, plaintiff has continued to make unauthorized expenditures. Despite innumerable requests from me and from my Court-appointed accountants, plaintiff also has failed to provide timely back-up for a variety of questionable disbursements – such as \$3,000 of charges at the Palm Beach, Florida resort mentioned above, \$50,000 of credit card payments for seemingly non-Partnership expenses – such as travel expenses incurred by plaintiff’s wife, computer purchases, \$10,000 for what appears to be the set-up costs for a new web site, tens of thousands of dollars for private jet trips, and others.

12. Perhaps most disturbing – and certainly presenting the highest dollar amount in question, is the revelation that last month plaintiff signed and issued a check for \$415,000 payable to a charitable organization, without my permission. The pledge to this organization was made before my appointment. I was specifically informed that a

pledge to this organization existed in January 2015. This payment was a blatant violation of my standing directions forbidding any disbursements without my authorization. I have instructed plaintiff to repay the money to the Partnerships but he has failed to do so.

Background

13. This receivership involves eleven operating law firms owned and controlled 50-50 by plaintiff Paul J. Napoli and defendant Marc J. Bern. The Partnerships' nationwide business entails the representation of plaintiffs in litigations, arbitrations and mediations.

14. The Court's Appointing Order affords me the power to receive and collect funds generated by the operation of the Partnerships. Order at p. 4. Appropriately, the Appointing Order simultaneously carves out and excludes from my powers "any authority in connection with the day-to-day decision making" concerning the prosecution, handling and settlement of cases on behalf of Partnership clients. Order at p. 8.

15. Described most simply, my power extends to the administrative and business side of the Partnerships, while the principals, Messrs. Napoli and Bern, remain responsible for the day-to-day lawyering done by the Partnerships on behalf of their clients.

16. The Partnerships maintain approximately 100 separate accounts at different banks. The Partnerships' bank accounts generally fall into three categories: accounts used for the administration of the Partnerships' daily operations and accounts used to cover disbursements in connection with the prosecution of cases (collectively, the

“Operating Accounts”), and traditional attorney escrow accounts for the deposit of funds that belong in whole or in part to law firm clients (“Escrow Accounts”).

17. This application is addressed to the Partnerships’ Operating Accounts. The Escrow Accounts are not at issue here.

18. Since my appointment on November 17, 2014, I have been respectful of plaintiff and defendant’s many different duties as law firm partners. They are attorneys with ongoing professional responsibilities in connection with active client files, the prosecution of cases in multiple jurisdictions, and the routine engagement of court reporters, medical and scientific experts, and assorted outside vendors.

19. In light of the parties’ ongoing responsibilities in all of these respects, I have reasonably afforded them continued access to the Partnerships’ Operating Accounts, while simultaneously exercising my authority to control disposition of Partnership property and funds pursuant to the Court’s Appointing Order.

20. During the weeks immediately following my appointment as Receiver, I worked with my Court-appointed accountant Mark S. Warshavsky to become familiar with the Partnerships’ various Operating Accounts and to gain an understanding of the parties’ relatively intricate bookkeeping practices

21. On February 10, 2015, after having become familiar with the contours of the Partnerships’ day-to-day accounting and bookkeeping activities, I formally implemented written disbursement “Protocols.” The Protocols cover the disbursement of all checks and wire transfers from the Partnerships’ Operating Accounts.

22. A copy of my Protocol Memorandum is attached as Exhibit 2.

23. I distributed the written Protocols to the law firm principals, Messrs. Napoli and Bern, and to all other individuals involved in the Partnerships' day-to-day accounting and bookkeeping activities. I gave both Mr. Napoli and Mr. Bern an opportunity to review and comment on the Protocols before I formally implemented them in February.

24. The Protocols do not apply to the Escrow Accounts, which at all times have remained the exclusive responsibility of the Partnerships' two principals, plaintiff Napoli and defendant Bern, consistent with the Court's Appointing Order.

25. The Protocols are entirely reasonable. They strike a balance between my need to control disbursement of Partnership funds, while at the same time affording the parties latitude to incur necessary and appropriate expenses on behalf of their business.

26. The Protocols permit timely disbursement of funds from the Partnerships' Operating Accounts, to cover a myriad of routine payable items, payroll obligations, and sundry day-to-day law firm expenses. The key function of the Protocols is to allow me and my accountant to review the relevant documentation and backup material, in advance of each proposed expenditure, to determine whether the disbursement is justified, and then to approve the payment once I am satisfied with the expenditure.

27. The Protocols expressly forbid any disbursement over \$1,000 without my written approval. For disbursements *under* \$1,000, the Protocols require an email to Messrs. Napoli and Bern, copied to me as Receiver and to my accountant Mark Warshavsky. Three hours after the email notification, absent an objection by either of the law firm principals, or my Court-appointed accountant, or me, the payment under \$1,000 may be issued.

28. The Protocols I have established are a sensible method of maintaining control over the assets of the Partnerships, while keeping intact the law firms' pre-existing and relatively complex accounting systems and numerous Operating Accounts, and allowing the principals to continue conducting themselves as practicing attorneys with responsibilities for numerous high-stakes law suits.

29. Consistent with the Court's Appointing Order, I have also agreed to allow the parties to maintain their corporate credit cards, such as their business Amex cards, with the understanding that all payments to American Express and other credit card companies will be processed through the disbursement-approval Protocols. This again has been done as a convenience to the principals, with recognition that I must have ultimate control over Partnership funds expended via credit cards.

30. Unfortunately, plaintiff has failed to follow the Protocols. The situation has gone on for some time, and I have tried every tactic short of this application to gain his cooperation. But despite my best efforts, plaintiff Napoli has signed and issued checks on multiple occasions without my prior approval. And after I have learned about his expenditures, or questionable credit-card charges, he has failed to timely produce the receipts or other back-up materials to explain or justify the payment.

31. The most recent example of this is the aforementioned check for \$415,000 signed by plaintiff Napoli and issued to a charitable organization. A copy of the check is attached as Exhibit 3, redacted to protect the identity of the payee and to preserve confidentiality of banking information consistent with the Court's E-Filing Protocols.

32. My understanding based on conversations with defendant Bern's counsel is that defendant Bern was unaware the \$415,000 check was being issued, did not approve of the disbursement, and wants plaintiff to return the funds to the Partnerships.

33. I have directed plaintiff Napoli to return the \$415,000 to the Partnerships. He has not done so. Plaintiff has tried to excuse himself with the explanation that he made a charitable pledge before the creation of this Receivership, but whether he did is of no moment and his defensive explanation misses the point. The fact is that through his continued access to Partnership funds and disregard of my disbursement Protocols, plaintiff Napoli is thwarting the letter and spirit of this Court's Appointing Order. The Court's Order requires the Receiver – and not the parties – to have ultimate authority over the use and disposition of Partnership assets.

34. The \$415,000 check is but one example of Partnership funds being expended from the Operating Accounts without my approval, in violation of my established Protocols and essentially in violation of the Court's Appointing Order. Other checks signed and issued by plaintiff without my prior approval, or charges incurred without adequate back-up being presented to justify the payments, include the following examples:

- a. \$25,131.73 (check made payable to American Express for a credit card account which we believe has been used to cover non-Partnership expenses);
- b. \$5,000 – check made payable to a lawyer, whom plaintiff engaged for non-Partnership business;

- c. \$33,319.29 (check made payable to a credit card company, also to cover what plainly appear as non-Partnership expenses, such as travel expenses for plaintiff's wife, computer purchases, and the like);
- d. \$1,999 – amount charged to a Partnership business credit card for the EAU Palm Beach Resort at Lantana;
- e. \$1,059 – amount charged to a Partnership business credit card for the EAU Palm Beach Resort at Lantana;

35. Again, these are representative examples of checks issued or charges incurred by plaintiff, without my prior authorization and lacking reasonable justification. This is not an exhaustive list, but only examples from a substantial list of unauthorized disbursements by plaintiff. Aside from plaintiff's disrespect for my Protocols, and the disbursement of funds without my knowledge, I have still not received adequate supporting documents related to these unauthorized disbursements.

36. For the foregoing reasons, I request an order of this Court terminating plaintiff Paul Napoli's authority to sign checks, issue wire transfers or make credit card payments using any of the Partnerships' Operating Accounts, and directing plaintiff to return to me all of his Partnership business credit cards, including any cards in the possession or custody of his wife or his private driver.

37. I further request that plaintiff be directed to return to the Partnerships the amount of \$415,000, which plaintiff disbursed without authorization.

38. As explained above, before making this application, I gave plaintiff one final chance, until 4:00 p.m. yesterday, to produce to me all of the necessary back-up material to support the charges he has incurred, and the thousands of dollars in payments he has made. This last chance to provide me with reasonable support was the culmination of many attempts by me and my accountant to explain his actions. Plaintiff produced some information supporting some of the charges, but by no means all of them, and the overriding fact remains that plaintiff has flouted my reasonable requirements regarding prior approval, has not explained nearly all of the questionable charges to my satisfaction, and has not returned the \$415,000 that he disbursed without my authorization. Plaintiff continues to have check and wire transfer authority, and he continues to possess or control multiple business credit cards.

39. The fact is yesterday's deadline was simply my way of giving plaintiff one last opportunity to comply with my long-outstanding requests – after many, many failed prior attempts at gaining his cooperation. His turnover of a portion of the long-overdue information eliminates neither the need nor the propriety of this application.

40. If anything, the fact that plaintiff was able to meet yesterday's deadline, on 24 hours notice, simply shows that he could have gotten the materials to us much sooner – had he wanted to. Plaintiff appears to have delayed producing the back-up materials, apparently available, without excuse.

41. Again, just to be clear, the limited support requested of plaintiff this week was only a sampling culled from a longer and more extensive list of questionable

disbursements by plaintiff, compiled to show expenditures where justification and adequate supporting documents have never been produced.

42. This Court has “broad power to prevent frustration” of its order appointing a receiver in this action. *See Bank of Tokyo Trust Co. v. Urban Food Malls Ltd.*, 229 AD2d 14, 27 (1st Dept. 1996). A separate action is not required for the relief sought here, in light of the Court’s fundamental power to enforce the terms of its own prior Order establishing the Receivership in question (Exh. 1). Equally clear is the right of any receiver, recognized since time immemorial, to apply to the Court for instructions where, as here, disposition of the assets under receivership has become a source of contention. *See, e.g., In re Van Allen*, 37 Barb. 225 (New York Cty. Sup. Ct. 1861).

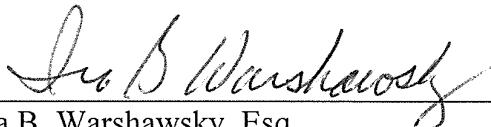
43. The appellate division has explained that, “[u]nder the inherent powers doctrine a court has all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective.” *Gabrelian v. Gabrelian*, 108 AD2d 445 (2d Dept. 1985), *overruled in part by A.G. Ship Maint. Corp. v. Lezak*, 569 NY2d 1, 6 (1986) (citing *Matter of People v Little*, 89 Misc 2d 742, 745, *affd* 60 AD2d 797 (4th Dept. 1977)). The Court’s “inherent power” to render meaningful its own prior orders is not dependent on any statute.

44. I am not requesting any limitation on either party’s ongoing authority with regard to the Partnerships’ Escrow Accounts. This is in keeping with the Court’s Appointing Order, which preserves the parties’ direct and exclusive responsibility and

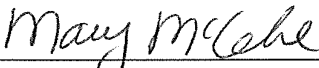
accountability for the professional handling of client litigations and matters, and excludes those activities from my Receivership.

45. No prior application has been made in this or any other Court for the relief requested herein.

WHEREFORE, for all the foregoing reasons, I request an order of this Court (i) terminating plaintiff Paul Napoli's authority to sign checks, issue wire transfers or make credit card payments using any of the Partnerships' Operating Accounts; (ii) directing plaintiff to return to the Receiver all of his Partnership business credit cards; (iii) directing plaintiff to restore to the Partnerships the amount of \$415,000; and granting such other, further and different relief as to the Court seems just and proper.


Ira B. Warshawsky, Esq.
As Receiver of the Napoli Bern Entities

Sworn to before me this
4th day of June, 2015


Notary Public

MARY McCABE
Notary Public, State of New York
No. 4603182
Qualified in Nassau County
Commission Expires November 30 2018