SUPERIOR COURT OF NEW JERSEY
CAPE MAY-LAW DIVISION

Ernest Bock, LLC	:	**Civil Action**
Plaintiff	:	
v.	:	**DOCKET NO.: ATL-L-2294-15**
Paul Steelman et al	:	
	:	**Order**
v.	:	
Anthony Catanoso et al.	:	
Defendants		

THIS MATTER having come before the Court the motion to enter injunctive relief maintaining the *status quo* and to appoint a temporary receiver; and the Court having heard argument and considered the papers submitted; and for good cause shown;

IT IS ON THIS 26th day of July 2017 ORDERED that

1. The motion of Defendants/Third-Party Plaintiffs, Paul Steelman and Maryann Steelman, to enter injunctive relief maintaining the *status quo* and to appoint a temporary receiver over Steel Pier Associates, LLC and Cape Entertainment Associates, LLC is denied.
2. FURTHER ORDERED that a copy of this Order be served on all parties within five (5) days.

J. Christopher Gibson, J.S.C.

Memorandum of Decision is attached.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY

CASE: Ernest Bock, LLC v Paul Steelman et al. v Anthony Catanoso et al.

DOCKET NO. **ATL-L-2294-15**
NATURE OF APPLICATION: **DEFENDANTS/THIRD-PARTY PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF AND TO APPOINT TEMPORARY RECEIVER FOR CAPE ENTERTAINMENT ASSOCIATES, LLC AND STEEL PIER ASSOCIATES, LLC**

MEMORANDUM OF DECISION ON MOTION

NATURE AND BACKGROUND OF MOTION

The Complaint in this matter was filed on October 5, 2015. The discovery end date was May 25, 2017. There were three previous extensions of discovery in this matter for a total of 541 days of discovery. Neither trial nor arbitration is currently scheduled. Defendants/Third-Party Plaintiffs, Paul Steelman and Maryann Steelman, now move for a *status quo* Order and for the appointment of a temporary receiver to control and manage the property and affairs of Cape Entertainment Associates, LLC and Steel Pier Associates, LLC.

This Court has carefully and thoroughly reviewed the moving papers and attached exhibits submitted by the parties with this cross-motion.

LEGAL ANALYSIS

To prevail in an application for a preliminary injunction, the plaintiff must show:

> (1) an injunction is necessary to prevent imminent and irreparable harm; (2) the movant asserts a settled legal right supporting its claim; (3) the material facts are not controverted; and (4) in balancing the equities or hardships, if injunctive relief is denied then the hardship to the movant outweighs the hardship to the non-movant.

B&S Ltd., Inc. v. Elephant & Castle Int'l, Inc., 388 N.J. Super. 160, 167-68 (Ch. Div. 2006), citing Morris County Transfer Station, Inc. v. Frank's Sanitation Serv., Inc., 260 N.J. Super. 570, 574 (App. Div. 1992) and Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (hereinafter, the "Crowe factors"). Specifically for the first Crowe factor, irreparable harm is defined as that which "cannot be redressed adequately by monetary damages." Crowe, 90 N.J. at 132-33. The burden of proof for an application for an injunction is by clear and convincing evidence. Dolan v. DeCapua, 16 N.J. 599, 614 (1954).

A less stringent standard applies for proposed injunctions seeking only to preserve the *status quo*: "A court may issue an interlocutory injunction on a less than exacting showing if necessary to prevent the subject matter of the litigation from being 'destroyed or substantially impaired.'" Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 534 (App. Div. 2008), quoting Gen. Elec. Co. v. Gem Vacuum Stores, 36 N.J. Super. 234, 237 (App. Div. 1955). Waste Mgmt. further explained:

> [W]hen the proposed injunction seeks only to preserve the *status quo*, these factors 'are not to be looked upon as hard and fast

> and sharply defined in scope; rather they are but factors, among others, which must be weighed, one with another, all going to the exercise of an exacting judicial discretion as to whether or not to issue a preliminary injunction.'
> […]
> So long as there is some merit to the claim, a court may consider the extent to which the movant would be irreparably injured in the absence of *pendent lite* relief, and compare that potential harm to the relative hardship to be suffered by the opponent if an injunction preserving the *status quo* were to be entered. If these factors strongly favor injunctive relief, … the *status quo* may be preserved through injunctive relief even though the claim on the merits is uncertain or attended with difficulties.

399 N.J. Super. at 534-36 (internal citations omitted). The New Jersey Supreme Court in Brenner v. Berkowitz, 134 N.J. 488, 517 (1993) affirmed injunctive relief from "any future acts of misconduct" even when the misconduct had not prevented the growth in the corporation or of the complainant's investment.

MOVANT'S POSITION

Defendants/Third-Party Plaintiffs, Paul Steelman and Maryann Steelman (hereinafter, "Steelman Defendants"), now move for injunctive relief under Crowe for a *status quo* Order preventing the alleged waste of Steel Pier Associates, LLC and Cape Entertainment Associates, LLC (hereinafter, "Steel Pier" and "Cape Entertainment," respectively, and collectively as the "Companies"), pursuant to N.J.S.A. § 42:2C-48. Steelman Defendants further move to appoint an independent third-party as temporary receiver for the control and operation of assets and business affairs of the Companies pending resolution of this litigation.

Steelman Defendants assert the following facts in connection with the instant application: Defendant Paul Steelman owns 20% interest in the Companies that operate and manage the Pier on the Boardwalk in Atlantic City, New Jersey (the "Pier"). The remaining 80% interest is owned in equal 20% shares between Third-Party Defendants, Anthony T. Catanoso, Charles T. Catanoso, William G. Catanoso, and Edward J. Olwell (together, the "Catanoso Defendants"). See Catanoso Defendants' Exhibits A & B (representing the Operating Agreements for Steel Pier and Cape Entertainment, respectively). Steel Pier is the entity that owns the Pier, Cape Entertainment is the entity that owns the amusement rides located on the Pier, and a third entity, Atlantic Pier Amusements, Inc. (in which Defendant Steelman holds no interest), is the management company of Steel Pier and Cape Entertainment (hereinafter, "Atlantic Pier"). Atlantic Pier operates the Pier under lease from Steel Pier, and subleases the Pier to Cape Entertainment, controlling revenue streams between each company and allocating assets, including payment of salaries to Catanoso Defendants.

In August 2011, the Companies borrowed $6,400,000.00 in mortgage notes from Plaintiff, Ernest Bock, LLC to purchase and improve the Pier (referred to as the "Bock Loans"). See Steelman Defendants' Exhibit 1 (representing the first Bock Loan Money Mortgage and Security Agreement, dated August 3, 2011). At that time, Steel Pier had already borrowed $14,000,000.00 from Atlantic City's Casino Reinvestment Development Authority ("CRDA"). Despite the previously borrowed $14,000,000.00, and

despite an allegedly steady revenue stream from the Companies at all times relevant, the Companies defaulted on Bock Loans, which is the basis of Plaintiff's first-party Complaint.

Steelman Defendants allege that they have been targeted, oppressed, and frozen out from business operations. Although all individuals owning interest in the Companies (and their spouses) signed personal guarantees for the Bock Loans, Plaintiff is only pursuing collection efforts against Steelman Defendants. Moreover, Plaintiff is not pursuing collection efforts against the Companies for the Bock Loans. Rather, according to Steelman Defendants, Plaintiff is not pursuing the Companies and Catanoso Defendants because Catanoso Defendants partnered with Thomas Bock of Ernest Bock, LLC to form Domeinac, LLC in 2012 (hereinafter, "Domeinac"). Since Defendants do not hold ownership interest in Domeinac, Defendants argue they are unable to protect their interest in the Companies. Rather, Domeinac is financially supported by the revenue streams of the Companies through the ownership interests by Catanoso Defendants, who are members of Domeinac.

As a result of the formation of Domeinac, Steelman Defendants argue that they have been targeted and oppressed, with their interest in the Companies being compromised. Specifically, Steelman Defendants allege that Steel Pier has had its debt nearly doubled from 2012 to 2015, with such funds siphoned to Domeinac and Atlantic Pier, in which, Steelman Defendants hold no interest. For example, even after Steel Pier had defaulted on the Bock Loans, Steel Pier executed a ground lease for an observational amusement

Wheel in 2013, with all benefits allegedly sub-leased to Domeinac and the financial burdens placed on Steel Pier as the lessee. See Defendants' Exhibits 25. Then in November 2014, Steel Pier borrowed an additional $4,110,000.00 from the CRDA. See Defendants' Exhibit 26. Also, a separate collection action by Firestone Financial, LLC against the Companies was settled in 2016 by way of a Loan Modification Agreement that permitted Steel Pier to assume the loan, now owed to the CRDA. See Defendants' Exhibit 22 (representing the Loan Modification Agreement).

To Steelman Defendants' knowledge, none of this money has been used to pay off the Bock Loans; as of May 1, 2017, Defendants assert that they have been refused access to the Companies' financial books and records, including the leases and loan documents for the various Steel Pier transactions. See Defendants' Exhibit 41; see also Exhibit 31 (representing an August 2016 e-mail exchange requesting financial documentation, with limited financial statements produced in February 2017).

Defendants seek to impose a *status quo* to prevent further alleged mismanagement and waste of the Companies. Defendants argue that they will likely succeed on the merits of their request for an appointment of a temporary receiver for their settled legal right, as required under Crowe, supra. Defendants seek an appointment of a statutory temporary receiver under N.J.S.A. § 42:2C-48 of the Revised Uniform Limited Liability Company Act ("RULLCA," N.J.S.A. §§ 42:2C-1 to -94). Under § 42:2C-48(b), a member

of the LLC may seek a remedy other than dissolution, including the appointment of a custodian or provisional manager, in instances where:

> (4)(a) the conduct of all or substantially all of the company's activities is unlawful; or
>
> (4)(b) it is not reasonably practicable to carry on the company's activities in conformity with one or both of the certificate or formation and the operating agreement; or
>
> (5)(a) [the managers or those members in control of the company] have acted, are acting, or will act in a manner that is illegal or fraudulent; or
>
> (5)(b) [the managers or those members in control of the company] have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

Moreover, the court "shall appoint a custodian or one or more provisional managers if it appears to the court that such an appointment may be in the best interests of the limited liability company and its members." § 42:2C-48(b). Given the recent 2012 enactment on RULLCA, Defendants assert that there is no case law limiting the court's broad discretion in affording relief under this provision.

In determining what acts are considered "oppressive," Defendants refer to the test for minority shareholder oppression set forth under Brenner v. Berkowitz, 134 N.J. 488 (1993). Under the definition set forth in Brenner, shareholder oppression is conduct that frustrates a shareholder's reasonable expectations and a nexus to the shareholder's interest, such as by placing the minority shareholder's investment at risk. Id. at 508. In gauging the shareholder's reasonable expectations, the court is to account for the "special

nature of the close corporation … [which] requires that the court go beyond considering mere monetary harm." Id. at 509. Most importantly, the court has broad authority in this regard, and the statute is not a limit on the court's inherent power to achieve equity. Sipko v. Koger, Inc., 214 N.J. 364, 383 (2013).

New Jersey courts have applied case-by-case analyses of what has constituted minority shareholder oppression. See Muellenberg v. Bikon Corp., 143 N.J. 168, 180 (1996) (acknowledging that "oppression by shareholders is clearly shown when they have awarded themselves excessive compensation, furnished inadequate dividends, or *misapplied and wasted corporate funds*") (emphasis added); Musto v. Vidas, 281 N.J. Super. 548 (App. Div. 1995) (identifying amending bylaws to reduce number of directors in order to eliminate minority shareholder's position, termination of minority shareholder's employment, and attempts to dilute minority shareholder's shares as acts of oppression); Kelly v. Axelsson, 296 N.J. Super. 426, 436 (App. Div. 1997) (holding that the maintenance of an accounting system "whose shortcomings have the effect of substantially preventing the outside, minority shareholders from ascertaining and verifying the corporation's income would constitute unfairness and oppression toward the minority shareholders"). Steelman Defendants argue here that minority shareholder oppression in the Companies has occurred. Steelman Defendants did not anticipate that Steel Pier would be used as a conduit for borrowing millions of dollars, none of which were used to pay back those loans but

rather to fund the development of the Wheel project alongside Thomas Bock, which was done through an entity other than Steel Pier. See Certification of Paul Steelman, paragraphs 28-30. Steelman Defendants submit that this conduct is directly harmful and oppressive to them, as the Companies do not benefit in any way from and do not have any business justification for the current loan scheme. Steelman Defendants further submit that this scheme is sufficient to warrant the appointment of a temporary receiver under N.J.S.A. § 42:2C-48(b).

Alternatively, if the Court declines the appointment of a statutory receiver under § 42:2C-48(b), the appointment of a temporary receiver is still an equitable remedy that the Court may impose. It is well-settled that a court of equity has an "inherent power in a proper case to appoint a receiver for a corporation on the ground of gross or fraudulent mismanagement by corporate officers or gross abuse of trust or general dereliction of duty." Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C. v. Lowenstein Sandler, P.C., 365 N.J. Super. 241, 249 (App. Div. 2003). The court's discretion is broad, including granting the power to sell assets under the court's supervision, or, "if necessary, the company itself." Id. (citations omitted). Powers of a custodial receiver are "normally limited to preserving the corporation or its assets *pendente lite*." Id. at 253 (Fisher, J.A.D., concurring); accord Kassover v. Kassover, 312 N.J. Super. 96, 100 (App. Div. 1998) (limiting a court's ability to appoint a receiver "for the short period of

time required to protect assets pending a final resolution of litigation or a dissolution of the business enterprise").

The court can also appoint a "special fiscal agent," which is another *pendente lite* device but a lesser remedy than appointing a receiver. N.J. Realty Concepts, LLC v. Mavroudis, 435 N.J. Super. 118, 125 (App. Div. 2014). Like appointing a receiver, appointing a special fiscal agent is appropriate when there is evidence that the defendants have engaged in financial mismanagement, self-dealing, or overall creating corporate waste. Kassover, 312 N.J. Super. at 99. The difference, however, is that the special fiscal agent does not have the power to perform adjudicative functions. For example, in Roach v. Margulies, 42 N.J. Super. 243, 245 (App. Div. 1956), the fiscal agent was empowered to check business records for the propriety of all corporate disbursements and to bring questionable behavior to the attention of the parties (who may then opt to apply to the court for relief).

Again, Defendants request the appointment of a receiver (or alternatively a fiscal agent) to preserve the *status quo* and prevent future waste, along with determining if past mismanagement exists and to what extent.

As to the element of suffering irreparable harm under Crowe, Defendants remind the Court that they only seek to preserve the *status quo* pending resolution of the litigation, in accord with Waste Mgmt., 399 N.J. Super. at 534, supra. Defendants submit that their investment in the Companies will be destroyed if the waste of the Companies' assets by

Catanoso Defendants will continue. See Defendants' Brief, pp. 32-33 (summarizing incidents of alleged waste of assets of Companies).

As to the element of balancing the equities under Crowe, Defendants submit that the appointment of a receiver should not result in any harm to the Companies or Catanoso Defendants; Defendants assert that the appointment of a receiver should not in any way impair the proper and reasonable operation of the Companies' business. To the contrary, Defendants submit that not granting such relief will yield harm to Defendants, allegedly due to the conduct of Catanoso Defendants. Defendants also note a public policy element to the analysis: the money from the CRDA infused into Steel Pier is public funding which should be allocated appropriately and efficiently for redevelopment of New Jersey. See also N.J.S.A. § 5:12-1(b) (listing public policy reasons behind New Jersey's Casino Control Act, under which the CRDA is created). Accordingly, Defendants submit that they have satisfied the Crowe test to warrant an imposition of a *status quo* Order and appointment of receiver for the Companies.

PLAINTIFF'S OPPOSITION

Plaintiff, Ernest Bock, LLC, does not take a particular position in regard to the relief sought. However, Plaintiff nevertheless filed paperwork seeking to correct and clarify the factual backdrop that Defendants have set forth.

Plaintiff never desired to obtain interest in the Pier or in the Companies. Plaintiff only saw this as an investment opportunity, where the

personal guarantees of Defendants justified Plaintiff's decision to invest in the Companies. See Plaintiff's Exhibit A (representing the net worth financial analysis of Steelman Defendants); should Defendants default in their Bock Loan obligations, Plaintiff would seek to collect from Steelman Defendants, leaving them with the ability to seek contribution from the other members in interest.

Plaintiff recognizes the ailing financial atmosphere of Atlantic City. Plaintiff believed that the construction of the Wheel, funded through the CRDA, would be beneficial in financially revitalizing the boardwalk. Plaintiff has offered loan modifications to Defendants in an effort to resolve the matter, but Defendants have rejected those offers. Instead, given Thomas Bock's personal guarantees to the CRDA loan, Plaintiff has offered deals to sell the Wheel, which would repay the loan and also financially benefit Defendants. See Plaintiff's Exhibit B (representing the 2016 Loan Modification Agreement). Plaintiff asserts that neither Defendants nor the Companies bear the burden of paying the CRDA loans for Wheel-related funding *and* they receive certain Wheel related-revenues.

THIRD-PARTY DEFENDANTS' OPPOSITION

Third-Party Defendants, Anthony T. Catanoso, Christine Catanoso, Charles T. Catanoso, Jr., Nina Catanoso, William G. Catanoso, Tina Catanoso, Edward J. Olwell, Roberta Nevin, Cape Entertainment Associates, LLC, The Rocket, LLC, Hi Tech Thrills, LLC, Atlantic Pier Amusements,

Inc., and Steel Pier Associates, LLC (collectively, the "Catanoso Defendants"), oppose the instant motion.

Catanoso Defendants argue that most, if not all, facts asserted by Steelman Defendants are unverified and directly in dispute. First, Defendants were not subject to minority shareholder oppression or that they were "frozen out" of dealings of the Company. Rather, according to a May 13, 2015 e-mail, Mr. Steelman voluntarily withdrew from the Companies. See Catanoso Defendants' Exhibit L. Catanoso Defendants explain that the withdrawal was due to disagreement about the purchase of the "Star Flyer" ride, which was discussed in October 2011. However, on November 1, 2012, Mr. Steelman sent a list of new conditions that would have to be met for Mr. Steelman to keep his promise to lend money to fund the Star Flyer project. Anthony Catanoso informed Mr. Steelman that same day that the new conditions could not be met. See Catanoso Defendants' Exhibits I & J. Since that time, Mr. Steelman abandoned the Companies and never funded the Star Flyer project, which was confirmed in the aforementioned May 13, 2015 e-mail correspondence. Therefore, Catanoso Defendants reject any argument that Mr. Steelman was "frozen out" from Wheel Project negotiations and dealings. With exception of engaging in settlement discussions for the Firestone Financial, LLC debt (which benefitted Steelman Defendants personally), Mr. Steelman did not complain of any debts for five years, to which now he alleges corporate mismanagement and self-dealings. Similarly, Mr. Steelman has not requested a temporary receiver at any time from the

filing of the Amended Answer, Counterclaim, and Third-Party Complaint in May 2016 until now.

Furthermore, Catanoso Defendants argue that Steelman Defendants lead this Court to believe that it had no idea where the funding from the CRDA had gone, including to the Wheel project. However, Mr. Steelman himself prepared the initial CRDA loan agreement. See Catanoso Defendants' Exhibit N. Also, in regard to the second Bock Loan (of $2,000,000.00), Mr. Steelman raised no complaints about the allocation of these funds for almost five years. The costs for the development of the Wheel project were consistently allocated in budget projections. See Catanoso Defendants' Exhibits C & D (representing the CRDA loan applications); Steelman Defendants' Exhibit 46 (accounting for a "Pensacola Ferris Wheel" in redevelopment draft notes). Also, the CRDA funds that were borrowed during 2013 and 2014 were personally guaranteed by Domeinac, LLC, The Wheel Guys, LLC, Anthony Catanoso, William Catanoso, Charles Catanoso, Edward Olwell, and Thomas Bock. See Steelman Defendants' Exhibit 22, §§ 4-5, pp. 12-17 (representing the September 2016 CRDA Loan Modification Agreement). Overall, Catanoso Defendants submit that the financial proofs that Steelman Defendants provide (as set forth in a financial chart in their motion brief, pp. 16-17) are wholly misleading for the allegation of corporate asset mismanagement, as the numbers identified are gross amounts only. See Steelman Defendants' Exhibits 32-39 (representing financial statements of the Companies for the years 2012 through 2015).

As to the statutory availability of a temporary receiver, Catanoso Defendants recognize that a custodian can be appointed under N.J.S.A. § 42:2C-48(b). However, courts have offered the remedy of a custodial receiver "only with supreme caution and upon imposing and persuasive supporting proof." Neff v. Progress Bldg. Materials Co., 130 N.J. Eq. 356, 357 (1947); see also Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C. v. Lowenstein Sandler, P.C. 365 N.J. Super. 241, 248 (App. Div. 2003) (emphasizing the "rarity of resort to this device, as well as delicacy of the decision"). Ravin further explained:

> The appointment of any receiver is an extraordinary remedy, and involves the delicate exercise of judicial discretion. It has been said that appointment of a receiver where corporate assets are involved may proceed only upon imposing and persuasive proof. This requirement stems in part from the "paralytic" effect of a receiver on the corporate affairs.

Id., quoting First Nat'l State Bank v. Kron, 190 N.J. Super. 510 (App. Div.), certif. denied, 95 N.J. 204 (1983). In providing imposing and persuasive proof, a plaintiff must prove that the subject business was "being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders." Rothman v. Harmyl Inn, Inc., 61 N.J. Super. 74, 85 (App. Div. 1960) (internal quotes omitted).

Again, Catanoso Defendants submit that Steelman Defendants have not presented satisfactory proofs that warrant the extraordinary relief of appointing a receiver for the Companies. Contrary to Rothman, supra, it

appears that Steelman Defendants seek to become *more* involved in the Companies, rather than seeking to protect their interests from the Companies' alleged verge of failure. Moreover, Catanoso Defendants note that the financial transactions upon which Steelman Defendants rely as the basis for irreparable financial harm took place in 2012-2014 – transactions that Mr. Steelman was aware of and participated in (or at least acquiesced to).

Similarly, Catanoso Defendants reject the appointment of a receiver as an equitable remedy. The equitable appointment of a receiver is a device "of last resort." Ravin, 265 N.J. Super. at 249, quoting Roach v. Margulies, 42 N.J. Super. 243 (App. Div. 1956) ("[S]uch drastic action is avoided where possible, and if the relief necessary can be accomplished by some less onerous expedient."). Again, Catanoso Defendants submit that Steelman Defendants have failed to establish sufficient proofs of irreparable harm that would warrant the equitable appointment of a receiver.

Overall, Catanoso Defendants argue that Steelman Defendants have failed to show immediate or existent irreparable harm that would warrant *pendente lite* injunctive relief under Crowe. First, the only harm that Steelman Defendants allege are monetary damages, i.e., claims of contribution against the co-guarantor Third-Party Defendants. Second, based on the discrepancies set forth above by Catanoso Defendants, there is no likelihood of success on the merits. Rather, Catanoso Defendants assert that all material facts of the operation of the Companies are controverted. Third,

contrary to Steelman Defendants' assertions, the appointment of a receiver will result in a "paralytic" effect on the management and operation of the Companies. Experienced company management teams will be replaced by unknown receivers, resulting in corporate disruption to these entities. Catanoso Defendants argue that disrupting the Pier's operation in the critical summer season will create hardships, not just for the Companies, but for Atlantic City as a whole during its attempt to recover from the recent casino shutdowns.

REPLY

Steelman Defendants dispute that their asserted facts are not substantiated by the record. To the contrary, Steelman Defendants argue that Catanoso Defendants do not support their position by citation to the record. In fact, Catanoso Defendants do not respond to the various allegations set forth by Defendants in the more recent actions, including Catanoso Defendants' refusal to provide company books and records, distributions of recent loans to the individual Catanoso Defendants, and the spending of the Companies of millions of dollars instead of satisfying the Bock Loans. See Defendants' Reply Brief, pp. 3-4.

Steelman Defendants address Catanoso Defendants in turn. First, Steelman Defendants assert that the application for a temporary receiver is timely. A 2014 CRDA loan was made out to Steel Pier, from where Domeinac and Catanoso Defendants benefitted. See Steelman Defendants' Exhibits 27 & 28. This loan money was then transferred over to Atlantic Pier and

Domeinac, in which Steelman Defendants do not hold interest, during the years 2012-2015. In 2016, the settlement of the Companies in the Firestone action resulted in the doubling of the amount due to Firestone Financial, LLC. See Defendants' Exhibit 22. Defendants were unaware of these transfers until February 2017, when Catanoso Defendants first provided limited financial information for the Companies during the years 2012 through 2015. See Defendants' Exhibits 32-39.

As to the factual assertion that Mr. Steelman "withdrew" from active participation in the Companies (but still holds the 20% ownership interest in the Companies), this was due to Catanoso Defendants' rejection of common-sense business decisions. See Steelman Cert., paragraph 23; see also Defendants' Exhibit 46. Also, Mr. Steelman did attempt to sell his ownership interest according to a February 11, 2013 e-mail, but the proposed deal failed. See Defendants' Exhibit 51. Nevertheless, Steelman Defendants argue that these facts are a red herring; it does not affect whether a temporary receiver should be appointed to govern the affairs of the Companies.

Similarly, Steelman Defendants argue that the facts surrounding the purchase of the "Star Flyer" also have no bearing on the instant motion. This failed purchase does not regard the Bock Loans and the aforesaid failure to pay them. As to the CRDA loan applications and the application for funding for the Wheel Project, Steelman Defendants admit, and never disputed, that they were aware of the terms of the applications at all times relevant. Steelman Defendants argue again that these facts distract from the central

issue of whether overleveraging Steel Pier and then transferring those loan funds to Domeinac and Atlantic Pier constitute extraordinary circumstances that warrant the appointment of a receiver. Steelman Defendants assert that their assets are in jeopardy as Catanoso Defendants do not have the financial wherewithal to make their personal guarantees on the loans to be a significant factor in the analysis. See Certification of Thomas Bock, paragraph 5.

As for the Firestone Settlement, Mr. Steelman never consented to the terms of the Firestone Loan Modification Agreement. See Defendants' Exhibit 52; see also Exhibit 22 (representing the Firestone LMA, with Mr. Steelman not listed as a party to that agreement).

As to the allegation that Steelman Defendants' proffered financial charts are fabricated or misleading, Steelman Defendants submit that the charts are supported by the financial documentation of Exhibits 32-39. It is clear, based on these values, that Steel Pier has been lending millions of dollars to Atlantic Pier without explanation, instead of paying off the Bock Loans. Steelman Defendants argue that one can infer from Catanoso Defendants' silence for this lending that the appointment of a receiver is necessary.

As to Catanoso Defendants' legal assertions, Steelman Defendants maintain that there exists ongoing harm of the Companies. For example, the Wheel project construction is ongoing, with completion of the project estimated for August 2017. See Defendants' Exhibit 53. As for the relative

hardships under Crowe, Steelman Defendants argue that Catanoso Defendants have not provided any evidence or argument that the appointment of a temporary receiver will have a negative impact on the Companies.

Specifically addressing Plaintiff's Opposition, Steelman Defendants argue that, while much of the Certification of Thomas Bock is irrelevant, the point that Mr. Bock feels compelled to address any suggestion that the Companies are diverting funds for the benefit of Domeniac supports Steelman Defendants' allegations. See Bock Cert., paragraph 2.

SUR-REPLY

Catanoso Defendants submitted a Sur-reply letter on July 18, 2017, after the July 14, 2017 Oral Argument date.[1] It became apparent to Catanoso Defendants that a critical issue of Steelman Defendants is that they have not gained access to the Companies' books and records. However, the information sought during Oral Argument was already part of Steelman Defendants' discovery requests. Catanoso Defendants submit that the disclosure of this information would be better suited by a motion to compel responses to these discovery requests. Catanoso Defendants note that they are not delinquent in responding to these requests, according to the dates set forth by a Case Management Order entered by the Honorable Joseph L. Marczyk, P.J.Cv.

[1] Catanoso Defendants did not seek leave of court to file this July 18, 2017 supplemental letter, and Steelman Defendants did not seek leave of court to file their July 19, 2017 sur-sur-reply. Therefore, these supplemental submissions violate R. 1:6-3(a). Nevertheless, when considering the substance of these submissions, it does not affect the Court's analysis.

Overall, Catanoso Defendants submit that Steelman Defendants received all financial records that Mr. Steelman is entitled to access under the applicable Operating Agreements and New Jersey statutes.

SUR-SUR-REPLY

Steelman Defendants maintain that they are not merely seeking discovery. Rather, they are seeking to end harmful, wasteful, and oppressive conduct under N.J.S.A. § 42:2C-48(a)(5)(b). Steelman Defendants submit that the conduct of failing to provide answers to many of Steelman Defendants' financial questions is evidence of a need for a receiver and injunctive relief.

DISCUSSION

Defendants/Third-Party Plaintiffs, Paul Steelman and Maryann Steelman, are not entitled to injunctive relief maintaining the *status quo* and appointment of custodial receive either through equity or N.J.S.A. § 42:2C-48(b).

Defendant Paul Steelman owns a 20% interest in the Companies that operate and manage the Pier on the Boardwalk in Atlantic City, New Jersey (the "Pier"). The remaining 80% interest is owned in equal 20% shares between the four Catanoso Defendants. See Catanoso Defendants' Exhibits A & B (representing the Operating Agreements for Steel Pier and Cape Entertainment, respectively). Steel Pier is the entity that owns the Pier, Cape Entertainment is the entity that owns the amusement rides located on the Pier, and a third entity, Atlantic Pier Amusements, Inc. (in which Defendant Steelman holds no interest), is the management company of Steel

Pier and Cape Entertainment (hereinafter, "Atlantic Pier"). Atlantic Pier operates the Pier under lease from Steel Pier, and subleases the Pier to Cape Entertainment, controlling revenue streams between each company and allocating assets, including payment of salaries to Catanoso Defendants.

In August 2011, the Companies borrowed $6,400,000.00 in mortgage notes from Plaintiff, Ernest Bock, LLC to purchase and improve the Pier (referred to as the "Bock Loans"). See Steelman Defendants' Exhibit 1 (representing the first Bock Loan Money Mortgage and Security Agreement, dated August 3, 2011). At that time, Steel Pier had already borrowed $14,000,000.00 from the CRDA. Despite the previously borrowed $14,000,000.00, and despite an allegedly steady revenue stream from the Companies at all times relevant, the Companies defaulted on Bock Loans, which is the basis of Plaintiff's first-party Complaint. Since the default, Steel Pier, presumably through Catanoso Defendants, nevertheless applied for additional loans, including receiving a second CRDA loan in the amount of $4.11 million in 2014. See Defendants' Exhibit 26.[2] Presumably, this money was used to fund the construction of the observational Pensacola Ferris Wheel. The Wheel project was managed by Domeinac, LLC (consisting of Catanoso Defendants and Thomas Bock) and The Wheel Guys, LLC. Mr.

[2] Steelman Defendants further assert that Steel Pier also entered into a Loan Modification Agreement with Firestone Financial, LLC in a separate connection action, where Steel Pier assumed the loan as part of the Agreements terms, essentially doubling its debt. See Steelman Defendants' Exhibit 22. It is true that Steel Pier entered into the Loan Modification Agreement, but upon review of Exhibit 22, the Loan Modification Agreement makes no mention of Steel Pier specifically taking on excess debt. Rather, Steel Pier, Cape Entertainment, Catanoso Defendants, the CRDA, The Wheel Guys, LLC, Atlantic Pier, The Rocket, LLC, Hi Tech Thrills, LLC, and Steel Pier Ocean Café, LLC all individually guarantee the loan. See Exhibit 22, §§ 4-5 (entitled "Cross-Obligation" and "Cross-Default," respectively). Mr. Steelman admits that he did not personally enter into the Loan Modification Agreement.

Steelman admits that was when he withdrew from active participation in the Pier's redevelopment, including from the construction of the observational Wheel project. See Catanoso Defendants' Exhibit L (representing a May 13, 2015 e-mail by Mr. Steelman indicating same). Despite the withdrawal from active participation, Mr. Steelman retains his 20% interest in the Companies.

Recently, Steelman Defendants claim that they have been "frozen out" of the Companies' management, including not being advised of adjournments of company meetings and being denied access by Catanoso Defendants to the financial books and records of the Companies. During the course of discovery, Catanoso Defendants provided Steelman Defendants with financial information for the Companies during the years 2012-2015. See Defendants' Exhibits 32-39; see also Defendants' Brief, pp. 16-17 (representing a summarized chart of rental income and loans receivable for Steel Pier).[3] Based on this data, Steelman Defendants argue that Catanoso Defendants, partnered with Thomas Bock through Domeinac, LLC, have purposely been transferring revenue from Steel Pier – in which Steelman Defendants hold an interest – to Atlantic Pier and Domeinac, LLC – in which Steelman Defendants hold no interest – and transferring debt from Atlantic Pier into Steel Pier. Steelman Defendants, as a member in the Companies, requested more recent financial data, in accordance with Art. XI, paragraph C of Steel Pier Operating Agreement (Defendants' Exhibit 41), but Catanoso

[3] Catanoso Defendants argue that the numbers set forth in Steelman Defendants' summarized chart are misleading, as they pertain only to gross values. The Court fails to see how listing gross values instead of net values under these circumstances mislead the Court in Steelman Defendants' allegations of waste and self-dealing. Nevertheless, the Court has reviewed Defendants' Exhibits 32-39 for the true values.

Defendants have refused access to these books. See Defendants' Exhibit 42 (representing the May 1, 2017 e-mail declining to provide the requested information).

To date, no loan monies have been used to pay the 2011 Bock Loans. Defendants argue that the recent transfers of money from Steel Pier to entities where Defendants hold no interest constitute waste and self-dealing on the part of Catanoso Defendants. As set forth more fully below, the Court does not agree. Steelman Defendants have not shown by clear and convincing evidence that these transfers, even if wholly accepted as true for purposes of this motion, were indeed self-dealing or fraudulent. Therefore, Steelman Defendants have not established a settled legal right for equitable injunctive relief under Crowe, even if Steelman Defendants simply seek to maintain the *status quo*. Similarly, without proof of misconduct irrespective of the transfers of money, Defendants are not entitled to the extraordinary relief of appointing a custodial receiver to the Companies.

Again, to prevail in an application for a preliminary injunction, the plaintiff must show:

> (1) an injunction is necessary to prevent imminent and irreparable harm; (2) the movant asserts a settled legal right supporting its claim; (3) the material facts are not controverted; and (4) in balancing the equities or hardships, if injunctive relief is denied then the hardship to the movant outweighs the hardship to the non-movant.

B&S Ltd., Inc. v. Elephant & Castle Int'l, Inc., 388 N.J. Super. 160, 167-68 (Ch. Div. 2006), citing Morris County Transfer Station, Inc. v. Frank's

Sanitation Serv., Inc., 260 N.J. Super. 570, 574 (App. Div. 1992) and Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). The burden of proof on an application for an injunction is by clear and convincing evidence. Dolan v. DeCapua, 16 N.J. 599, 614 (1954).

A. Irreparable Harm has not been Properly Claimed

Steelman Defendants have not sufficiently provided evidence that their interest in the Companies will be irreparably harmed without the imposition of *pendente lite* relief.

For the first Crowe factor, irreparable harm is defined as that which "cannot be redressed adequately by monetary damages." Crowe, 90 N.J. at 132-33. Steelman Defendants argue that their interest in the Companies will be harmed or substantially impaired while at the direction and mercy of Catanoso Defendants. Catanoso Defendants contend that what Steelman Defendants are claiming are mere monetary damages for alleged mismanagement of the Companies.[4]

The Court agrees with Catanoso Defendants' characterization of Steelman Defendants' alleged harm. The claimed loss of value and/or encumbrance of Steelman Defendants' interest in the Companies is a strictly monetary analysis. It has been argued, however, that Steelman Defendants are seeking to enjoin Catanoso Defendants' conduct of preventing Mr. Steelman from attending and voting at board meetings and from access to the

[4] Catanoso Defendants also argue that the only harm that Steelman Defendants are claiming are those under the contractual guarantee to pay the Bock Loans, which are pecuniary in nature. This is incorrect – Steelman Defendants are claiming that their interest in the Companies are being impaired by the actions of Catanoso Defendants and/or Thomas Bock.

books and records of the Companies. While these facts support a potential need for injunctive relief, Steelman Defendants have not articulated how they will be irreparably harmed from this continued conduct, other than to claim that the business decisions of Catanoso Defendants compromises Steelman Defendants' value in the Companies, which again, is a quantifiable question of monetary damages. Accordingly, Steelman Defendants have not shown irreparable harm.

B. Even with the Less Stringent Standard for *Status Quo* Relief, Defendants have not Shown a Settled Legal Right to Warrant the Appointment of a Receiver

Steelman Defendants have not shown by clear and convincing evidence that misconduct, fraud, or self-dealing exists to warrant the appointment of a receiver over the Companies by either statutory or equitable means, or alternatively, the appointment of a "special fiscal agent."

In appointing a receiver under either legal path, the Court notes that the remedy of appointing a custodial receiver is offered "only with supreme caution and upon imposing and persuasive supporting proof." Neff v. Progress Bldg. Materials Co., 130 N.J. Eq. 356, 357 (1947); see also Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C. v. Lowenstein Sandler, P.C. 365 N.J. Super. 241, 248 (App. Div. 2003) (emphasizing the "rarity of resort to this device, as well as delicacy of the decision"). Ravin further explained:

> The appointment of any receiver is an extraordinary remedy, and involves the delicate exercise of judicial discretion. It has been said that appointment of a receiver where corporate assets are involved may proceed only upon imposing and persuasive

> proof. This requirement stems in part from the "paralytic" effect of a receiver on the corporate affairs.

Id., quoting First Nat'l State Bank v. Kron, 190 N.J. Super. 510 (App. Div.), certif. denied, 95 N.J. 204 (1983). In providing imposing and persuasive proof, a plaintiff must prove that the subject business was "being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders." Rothman v. Harmyl Inn, Inc., 61 N.J. Super. 74, 85 (App. Div. 1960) (internal quotes omitted). Notwithstanding this strict standard for appointment of a receiver, the court has broad discretion in setting the scope of the receivership, including granting the power to sell assets under the court's supervision, or, "if necessary, the company itself." Ravin, 365 N.J. Super. at 249 (citations omitted). As set forth below, Steelman Defendants have not shown imposing and persuasive supporting proof for this extraordinary remedy.

1. Receivership under N.J.S.A. § 42:2C-48(b)

Under the Revised Uniform Limited Liability Company Act, a member of the LLC may seek a remedy other than dissolution, including the appointment of a custodian or provisional manager, in instances where:

> (4)(a) the conduct of all or substantially all of the company's activities is unlawful; or
>
> (4)(b) it is not reasonably practicable to carry on the company's activities in conformity with one or both of the certificate or formation and the operating agreement; or

> (5)(a) [the managers or those members in control of the company] have acted, are acting, or will act in a manner that is illegal or fraudulent; or
>
> (5)(b) [the managers or those members in control of the company] have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

N.J.S.A. § 42:2C-48(a). Moreover, the court "shall appoint a custodian or one or more provisional managers if it appears to the court that such an appointment may be in the best interests of the limited liability company and its members." § 42:2C-48(b).

There are no allegations that Catanoso Defendants acted contrary to law, either individually or in concert with Thomas Bock through Domeinac, LLC or another entity with Mr. Bock. Similarly, Defendants have not shown that one of Catanoso Defendants made a misrepresentation to the Steelman Defendants upon which Steelman Defendants relied to their detriment. Therefore, the Court shall only focus on whether to appoint a receiver under § 42:2C-48(a)(5)(b), where receivership relief may be granted if Steelman Defendants, as a minority shareholder, are oppressed and directly harmed by the other members' conduct.

The test for oppression of a minority shareholder is well-settled under Brenner v. Berkowitz, 134 N.J. 488 (1993). Under the definition set forth in Brenner, shareholder oppression is conduct that frustrates a shareholder's reasonable expectations and a nexus to the shareholder's interest, such as by placing the minority shareholder's investment at risk. Id. at 508. In gauging

the shareholder's reasonable expectations, the court is to account for the "special nature of the close corporation … [which] requires that the court go beyond considering mere monetary harm." Id. at 509. Most importantly, the court has broad authority in this regard, and the statute is not a limit on the court's inherent power to achieve equity. Sipko v. Koger, Inc., 214 N.J. 364, 383 (2013).

New Jersey courts have applied case-by-case analyses of what constitutes minority shareholder oppression. See Muellenberg v. Bikon Corp., 143 N.J. 168, 180 (1996) (acknowledging that "oppression by shareholders is clearly shown when they have awarded themselves excessive compensation, furnished inadequate dividends, or misapplied and wasted corporate funds"); Musto v. Vidas, 281 N.J. Super. 548 (App. Div. 1995) (identifying amending bylaws to reduce number of directors in order to eliminate minority shareholder's position, termination of minority shareholder's employment, and attempts to dilute minority shareholder's shares as acts of oppression); Kelly v. Axelsson, 296 N.J. Super. 426, 436 (App. Div. 1997) (holding that the maintenance of an accounting system "whose shortcomings have the effect of substantially preventing the outside, minority shareholders from ascertaining and verifying the corporation's income would constitute unfairness and oppression toward the minority shareholders").[5]

[5] Consistent with the Appellate Division's finding of minority shareholder oppression in Axelsson, the Court recognizes that Catanoso Defendants have refused access to 2016-2017 financial records of the Companies to Defendants, who are entitled under the Steel Pier Operating Agreement to said records. See Defendants' Exhibit 42. Axelsson remanded the matter to the trial court, noting that whatever remedy is to be offered must be commensurate with the severity of the oppression. 296 N.J. Super. at 437. While

Here, Defendants allege – though not shown by clear and convincing evidence – that Catonoso Defendants are receiving increased salaries at the financial burden of Steel Pier. Moreover, there is no allegation that Catanoso Defendants have attempted to modify the Operating Agreements of the Companies to dilute or otherwise impair Steelman Defendants' interest in the Companies.

Rather, Steelman Defendants argue that the various transfers of funds between the Companies to Steelman Defendants' financial detriment constitute minority shareholder oppression by way of corporate waste. Corporate waste is defined as "an exchange of corporate assets for consideration so disproportionately small as to lie beyond the range at which any reasonable person might be willing to trade." Seidman v. Clifton Savings Bank, S.L.A., 205 N.J. 150, 162 (2011) (citations omitted). "Most often the claim is associated with a transfer of corporate assets that serves no corporate purpose; or for which no consideration at all is received." Id. (citations omitted). Only "substantial consideration received by the corporation … [and] good faith judgment that in the circumstances the transaction is worthwhile" can salvage an otherwise wasteful transaction. Id. (citations omitted).

Axelsson referenced the appointment to a fiscal agent (but not referencing the appointment of a receiver), the Appellate Division made no recommendation what remedy would be appropriate.

Given this clarification, even if Catanoso Defendants' refusal to provide financial documentation indeed constituted minority shareholder oppression, the Court finds that this does not warrant the extraordinary remedy of appointment of a receiver; appointing a receiver under N.J.S.A. § 42:2C-48(b) is permissive, not mandatory, for reasons of minority shareholder oppression. This issue is better suited for discovery motion practice.

Critically, Steelman Defendants have failed to satisfy their burden of proof in identifying Catanoso Defendants' motives in the exchanges of corporate assets. Steelman Defendants indeed assert in their Reply:

> [I]t was not until February 2017 when the Catanosos first provided Steelman with financial information from the Companies for 2012 through 2015 that Steelman saw the nature and extent of the Catanosos [*sic*] misdeeds. And, relatedly, it was not until May 2017, that the need for the Motion became most-apparent when the Catanosos refused to provide Steelman with explanations for the conduct at issue … .

Reply Brief, p. 7 (emphasis and footnote omitted). In this regard, Steelman Defendants admit that they simply do not know why the transactions between the Companies occurred in the way they did. See Reply Brief, p. 14 ("We can only infer from the Catanosos' silence that there is no legitimate explanation for this behavior.").

While Steel Pier has apparently sustained an increased debt, with its revenues being sent elsewhere, this simple fact is insufficient to show waste, self-dealing, fraud, or other corporate misconduct. Steelman Defendants must show, by clear and convincing evidence, that these transactions served no corporate purpose.[6] Ascertaining an explanation for the conduct of Catanoso Defendants is appropriate in the discovery– not as part of an application for *pendente lite* relief.

Finally, Steelman Defendants seek *pendente lite* receivership relief under N.J.S.A. § 42:2C-48(b): "The court shall appoint a custodian or one or

[6] In the event that Catanoso Defendants can articulate a corporate purpose, challenging that corporate purpose may be further subject to the Business Judgment Rule. Cf. Green Party v. Hartz Mt. Indus., 164 N.J. 127, 147-48 (2000).

more provisional managers if it appears to the court that such an appointment may be in the best interests of the limited liability company and its members." As set forth more fully below under an analysis for appointing a receiver in equity, Steelman Defendants have not shown by clear and convincing evidence that appointing a receiver is indeed in the best interests of the Companies.

2. Receivership as an Equitable Remedy

Steelman Defendants have not shown the need for the extraordinary remedy of appointing a receiver as equitable relief over the three Companies.

It is well-settled that a court of equity has an "inherent power in a proper case to appoint a receiver for a corporation on the ground of gross or fraudulent mismanagement by corporate officers or gross abuse of trust or general dereliction of duty." Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C. v. Lowenstein Sandler, P.C., 365 N.J. Super. 241, 249 (App. Div. 2003).

Again, Steelman Defendants have failed to show imposing and persuasive evidence of gross or fraudulent mismanagement of the Companies as required under Ravin. Rather, Steelman Defendants merely indicate that they have incurred financial harm to their interest in the Companies based on the recent transfers of revenue and debt liability, curiously all through Steel Pier. The Court will not speculate as to the reasons why Catanoso Defendants made these transfers; additional proofs are required to identify

these reasons. Therefore, Steelman Defendants' request for the extraordinary remedy of appointing a receiver is denied.

3. Appointment of a Fiscal Agent

Alternatively, Steelman Defendants request the appointment of a "special fiscal agent," which is another *pendente lite* device but a lesser remedy than appointing a receiver. N.J. Realty Concepts, LLC v. Mavroudis, 435 N.J. Super. 118, 125 (App. Div. 2014). However, for the same reasons of failing to provide proof of intentional corporate mismanagement, this request is denied.

Like appointing a receiver, appointing a special fiscal agent is appropriate when there is evidence that the defendants have engaged in financial mismanagement, self-dealing, or overall creating corporate waste. Kassover, 312 N.J. Super. at 99. The difference, however, is that the special fiscal agent does not have the power to perform adjudicative functions. For example, in Roach v. Margulies, 42 N.J. Super. 243, 245 (App. Div. 1956), the fiscal agent was empowered to check business records for the propriety of all corporate disbursements and to bring questionable behavior to the attention of the parties (who may then opt to apply to the court for relief).

The appointment of a fiscal agent might be appropriate in this manner given the involvement of Domeinac, LLC and other entities in construction of the Wheel, at least partly funded by the Companies. Moreover, overseeing disbursements of the Companies, especially for the overleveraged Steel Pier, would be beneficial in maintaining the Companies' operations. Nevertheless,

the Court's holding remains the same: the increased incurrence of debt on part of Steel Pier is not tantamount to corporate mismanagement on part of Catanoso Defendants. Without more, the Court declines judicial intervention into private business affairs. Therefore, the appointment of a fiscal agent is denied.

C. The Relative Hardships are in Favor of Catanoso Defendants

In balancing the relative hardships in determining whether to impose injunctive relief, the Court finds that Catanoso Defendants will sustain greater hardship if a *status quo* Order is entered.

In addressing this prong of the Crowe test, a court must look to the relative hardship likely to result if an injunction is granted, versus if it is denied. See Crowe, 90 N.J. at 132-34; Paternoster v. Shuster, 296 N.J. Super. 544, 556 (App. Div. 1997).

Catanoso Defendants argue that hardship would fall upon them if the Court replaced them, as "experienced company management teams with unknown, unidentified 'receivers' during their seasonal operations, thus causing incomprehensible disruption to these entities during this time … ." Catanoso Defendants' Opposition Brief, p. 24. In doing so a "paralytic effect" on the Companies' corporate affairs would result. See Ravin, supra, 365 N.J. Super. at 248.

This argument fails because, even if true, Steelman Defendants, as a member with interest in the Companies, would also incur the alleged

paralytic effect of a receiver. In other words, any detriment incurred in this regard would arise against Steelman Defendants and Catanoso Defendants alike. To the contrary, Steelman Defendants suffer an additional hardship for any alleged mismanagement done by Catanoso Defendants. Therefore, the Court disagrees with this argument.

Catanoso Defendants separately argue under public policy; the Pier, as a significant summer season tourist attraction within Atlantic City, is critical in maintaining and revitalizing the Atlantic City economy during major casino shutdowns. Steelman Defendants, on the other hand, use the same public policy rationale in favor of appointing a receiver; Steelman Defendants argue that judicial intervention is needed to maintain the rehabilitation and redevelopment of tourist facilities in Atlantic City. See N.J.S.A. § 5:12-1(b) (listing public policy reasons behind New Jersey's Casino Control Act, under which the CRDA is created).

Accounting for the relative hardship of Atlantic City, the paralytic effect of the receiver may prove more harmful than not during the critical summer season. Therefore, the Court finds this particular hardship to weigh against imposing injunctive relief.

The Court notes a third consideration which is not raised by Catanoso Defendants. Steelman Defendants complain that the funds are being inappropriately allocated. However, while Steelman Defendants retain interest in the Companies, it is undisputed that on May 13, 2015, Mr. Steelman voluntarily withdrew from active participation in the decision-

making of the Companies, presumably over a disagreement on an earlier project. See Catanoso Defendants' Exhibit L. Steelman Defendants thus would not be as prejudiced as the actively participating Catanoso Defendants should injunctive relief be imposed.

Accordingly, Catanoso Defendants overall suffer a greater relative hardship should injunctive relief be imposed than the hardship suffered by Steelman Defendants should injunctive relief not be imposed.

D. Notwithstanding the Relaxed Standard for Injunctions to Maintain the *Status Quo*, the Facts do not Support Strongly Favoring the Imposition of Injunctive Relief

In addition to the Court's ruling that Steelman Defendants have not shown by clear and convincing evidence any of the prongs of the Crowe test, the incomplete record does not justify imposing injunctive relief simply to maintain the *status quo*.

A less stringent standard applies for proposed injunctions seeking only to preserve the *status quo*: "A court may issue an interlocutory injunction on a less than exacting showing if necessary to prevent the subject matter of the litigation from being 'destroyed or substantially impaired.'" Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 534 (App. Div. 2008), quoting Gen. Elec. Co. v. Gem Vacuum Stores, 36 N.J. Super. 234, 237 (App. Div. 1955). Waste Mgmt. further explained:

> [W]hen the proposed injunction seeks only to preserve the *status quo*, these factors 'are not to be looked upon as hard and fast and sharply defined in scope; rather they are but factors, among others, which must be weighed, one with another, all going to

> the exercise of an exacting judicial discretion as to whether or not to issue a preliminary injunction.'
>
> […]
>
> So long as there is some merit to the claim, a court may consider the extent to which the movant would be irreparably injured in the absence of *pendente lite* relief, and compare that potential harm to the relative hardship to be suffered by the opponent if an injunction preserving the *status quo* were to be entered. If these factors strongly favor injunctive relief, … the *status quo* may be preserved through injunctive relief even though the claim on the merits is uncertain or attended with difficulties.

399 N.J. Super. at 534-36 (internal citations omitted). Injunctive relief such as this has been affirmed by the New Jersey Supreme Court in Brenner v. Berkowitz, 134 N.J. 488, 517 (1993), where injunctive relief was necessary to prevent "any future acts of misconduct" even when the misconduct had not prevented the growth in the corporation or of the complainant's investment.

Despite the less stringent standard for maintaining the *status quo*, Waste Mgmt. nevertheless cautioned:

> [T]he judge must remain cognizant that the issuance of an injunction, even when only interlocutory and only to preserve the *status quo*, represents the strongest weapon at the command of the court in equity. It represents a significant intrusion into the affairs of the parties, and, as here, the interests of the public – and yet often remains the most effective means to avoid an inequity.

399 N.J. Super. at 538 (internal quotes and citations omitted).

Even with the relaxed standard of Waste Mgmt. applied here, the Crowe factors do not strongly favor injunctive relief. The Court is left with only speculation as to the allegations of mismanagement and waste on part of Catanoso Defendants. While the strict standard of setting forth a settled

legal right in Crowe is relaxed for *status quo* applications, the merits of the matter are still far too uncertain to even determine whether *status quo* relief is warranted. To reiterate this Court's holding: even accepting as true Steelman Defendants' various assertions of increased debt on part of Steel Pier, while the diverted revenues are not directed towards paying the Bock Loans, these transfers of funds are not tantamount to corporate mismanagement on part of Catanoso Defendants. Without more, the Court declines judicial intervention into private business affairs. Accordingly, Steelman Defendants' application to appoint a receiver is denied.

CONCLUSION

The motion is opposed.

The motion of Defendants/Third-Party Plaintiffs, Paul Steelman and Maryann Steelman, to enter injunctive relief maintaining the *status quo* and to appoint a temporary receiver over Steel Pier Associates, LLC and Cape Entertainment Associates, LLC is denied.

An appropriate form of order has been executed. Conformed copies of that order will accompany this memorandum of decision.

July 26, 2017

J. Christopher Gibson, J.S.C.