

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of Florida,

Petitioner,

v.

Case No. 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT
CORPORATION, a Florida corporation,

Respondent.

ORDER APPOINTING RECEIVER

THIS MATTER having come before the Court on March 21, 2014 upon the Petition of Escambia County to appoint a Receiver pursuant to a Notice of Abandonment and the Court having heard argument of counsel and being fully advised in the premises, hereby finds:

1. Respondent owns and operates a water and wastewater utility and associated real and personal property constituting a system (hereinafter "System") within the jurisdictional boundaries of Escambia County, Florida. Respondent is a utility as defined by § 367.021(12), Fla. Stat. and owns and operates a system as defined by § 367.021(11), Fla. Stat.

2. Respondent purchases water and wastewater services from Emerald Coast Utilities Authority which is then resold and billed to the customers of System.

3. On or about January 27, 2014, Respondent formally filed a Notice of Abandonment pursuant to § 367.165(1), Fla. Stat. and Escambia County subsequently filed its Petition to Appoint a Receiver (the "Petition") to take possession of and operate

Respondent's System and utility.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED:

A. The County's Petition is hereby granted.

B. Appointment of Receiver and Term. Escambia County is hereby appointed as the Receiver for Respondent's System. The term of this receivership shall begin on a date mutually agreeable to the Receiver and Respondent, but no later than March 28, 2014. It shall terminate when the Receiver disposes of the real and personal property of Respondent as provided in § 367.165(2), Fla. Stat., in a manner designed to continue the efficient and effective operation of utility service. In light of Respondent's abandonment of the System, Respondent is not, nor will be, entitled to any benefits or proceeds, specifically including any proceeds from disposition of property or distribution of monies, that result from, or which are associated with, the disposal of all, or a part of, the System by the Receiver. Upon termination of the receivership as provided, the Receiver shall be released from all further obligations to operate and maintain the System.

C. Surrender of Property, Assets, Documents, and Facilities. All real and personal property, assets, documents, and facilities comprising and necessary to the System shall be transferred to the custody and possession of Receiver after entry of this Order. In this respect, Respondent shall: (1) transfer to and produce to the Receiver all customer account records, contracts, agreements, non-privileged correspondence, business records, easements, construction drawings, record drawings, O&M manuals, permits, operating protocol, and any other documents related to the System, to include the real and personal property, assets and liabilities associated therewith in order that the Receiver may then operate and maintain said System, and (2) surrender possession of all

real and personal property comprising the System and owned by Respondent to the custody of Receiver. Upon entry of this Order, Respondent shall transfer and produce all bank accounts, bank account records, customer deposits, cash, and accounts receivable balances to the custody of Receiver, which relate to the subject abandoned property and System. However, the Receiver shall maintain all documents in accordance with its record retention policy and subject to all applicable federal, state or local laws. At Respondent's cost and expense, Respondent may retain, or make arrangements for the duplication of records in the possession of the Receiver to be disposed of. To the extent that the System is sold or otherwise disposed of, the Receiver shall include a provision in the instrument effectuating the transfer for the maintenance of records as provided herein.

D. Receiver's Powers. Once the documents maintained and possessed by Respondent together with the real and personal property owned by Respondent are surrendered and transferred to the custody and possession of Receiver in accordance with Paragraph C above, the Receiver shall send written notice of receipt thereof to this Court and shall continue the lawful operation and maintenance of the utility service to the customers of Respondent. In order to discharge its responsibilities under this Order and by statute, the Receiver shall have the following powers and authority:

- (1) To provide and maintain water and wastewater utility service within the designated service area, in compliance with all applicable permits, regulations, local laws, and statutes;
- (2) To make extensions, expansions, repairs, replacements, and improvements to the System as appropriate and necessary;
- (3) To collect rates, fees and charges, and deposits for all utility service

provided by the System in accordance with all applicable state and local laws;

(4) To increase rates charged to customers served by the System or to impose special assessments in accordance with law upon real property owners benefitted by the System to pay for costs of operation, maintenance and upgrade of the System;

(5) To borrow money and to pledge or encumber the facilities, assets and revenues of the System for the repayment thereof;

(6) To enter into contracts or agreements with any other public agency or private entity providing for or relating to the operation and maintenance of the System or the connection of the customers to any other public or private water and wastewater utility;

(7) To accept any gifts, grants, or contributions in kind in connection with the management, operation, and maintenance of the System;

(8) To retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, or other professional consultants as necessary or desirable in the management, operation, or maintenance of the System and to ensure compliance with all provisions of this Order for the rates, fees and charges authorized under this paragraph;

(9) To pay from the revenues collected from the customers of the System, all necessary and reasonable operating expenses (including the costs and expenses contemplated in this paragraph) in a manner designed to continue the efficient and effective operation of said System. Furthermore, Receiver may expend such reasonable amounts as prudent, necessary, and advisable, in the professional judgment of Receiver, in order to effectuate the efficient and effective operation of the System.

(10) To sue or be sued, to implead or to be impleaded, to complain and defend in any court, and to seek all legal or equitable relief in accordance with applicable state law;

(11) To apply for and obtain any applicable federal, state, and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the System;

(12) To perform generally any other lawful acts necessary or desirable to carry out the express powers and authority granted and imposed herein.

(13) To seek further instructions and/or guidance from this Court concerning the operation and maintenance of the System during any part of the time frame that the receivership exists.

E. Continuing Jurisdiction. This Court shall retain jurisdiction in this cause to enter such further orders or take any action as it deems appropriate. Nothing in this Order is intended to determine what entity or person may be ultimately and permanently responsible for the operation and maintenance of the System, except as provided in Paragraph B, above. As Receiver did not operate or own a water and wastewater utility or system prior to entry of this Order, it is contemplated that Receiver will be endeavoring to dispose of the System in compliance with statute and in furtherance of its police power. Further, Respondent contends that certain parcels of real property are not part of the System and are not necessary for its effective and efficient operation. Receiver contends that the statutory definition of System set forth in § 367.021(11) provides that real property used or useful in providing service would encompass all real property owned by Respondent. In the event that Receiver and Respondent are not able to reach an

agreement concerning the extent of real property owned by Respondent which should be ultimately disposed of as part of Receiver's obligation under § 367.165(2), Fla. Stat., then the Court retains jurisdiction to make a determination as to the extent of real property either necessary or useful for the efficient and effective operation of the System.

F. Immunity from Liability and Violations. As consideration for Receiver assuming the responsibility for the continued operation and maintenance of the System, the Receiver and its agents and employees are hereby declared to be held harmless and not legally responsible for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have arisen or may arise out of (or be the result of) the past design, construction, operation, and maintenance of the System. This immunity shall include, but is not limited to: immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, or maintenance of the System occurring prior to the effective date of abandonment of March 28, 2014, or during the period of receivership, if such injury, damage or violation is the direct result of design, construction, operation or maintenance of the System occurring prior to the effective date of abandonment of March 28, 2014.

G. Respondent's Liability. Respondent shall remain liable under all applicable laws for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring on or prior to the effective date of abandonment of March 28, 2014. To the extent that any such claim, violation, demand, penalty, suit, proceeding, action, or fee is presented, Receiver, or its successors or assigns, shall make available to Respondent all documents surrendered pursuant to Paragraph C herein.

H. Receiver's Separation of Funds. Escambia County, as Receiver, is hereby directed by this Court to maintain separate accounts and records for the management of the Respondent's System. Additionally, this Court hereby directs that the revenues from the Respondent's System are not to be considered the revenues of the Receiver, nor are the revenues of the Receiver to be considered those of Respondent.

I. Receiver's Obligations for Operation. The Receiver in this cause is hereby directed to operate the System until disposed of as provided by this Order. The System shall be operated by the Receiver in such a manner so as to provide efficient and effective continuous service to the customers of the System during the term of this receivership and as can be provided from the revenues of the System.

J. Receiver's Accounting to the Court. Upon request and subject to the Florida Public Records Act, Receiver shall submit to the Court and to Respondent financial and operational reports for the System for the duration of its receivership.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida this 21st day of March, 2014.

ISI JAN SHACKELFORD

Jan Shackelford, Circuit Court Judge

Copies to: Charles V. Pepler, Deputy County Attorney
Ron Nelson, Attorney for Respondent