

Peggy Hunt (6060)
Scott A. Cummings (11443)
Nathan S. Seim (12654)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Email: hunt.peggy@dorsey.com
cummings.scott@dorsey.com
seim.nathan@dorsey.com

*Attorneys for D. Ray Strong, Chapter 11 Trustee for
Castle Arch Real Estate Investment Company, LLC*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
OPPORTUNITY PARTNERS I, LLC;
CASTLE ARCH OPPORTUNITY
PARTNERS II, LLC; CASTLE ARCH
KINGMAN, LLC; CASTLE ARCH
SECURED DEVELOPMENT FUND, LLC;
and CASTLE ARCH SMYRNA, LLC,

Debtors.

Bankruptcy Case No. 11-35082
Bankruptcy Case No. 11-35237
Bankruptcy Case No. 11-35240
Bankruptcy Case No. 11-35242
Bankruptcy Case No. 11-35243
Bankruptcy Case No. 11-35246
Bankruptcy Case No. 11-35241
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

**CHAPTER 11 TRUSTEE'S (1) OBJECTION TO MOTION FOR DISCHARGE
AND PAYMENT OF FEES FILED BY TRENT J. WADDOUPS, AND
(2) REQUEST FOR SURCHARGE UNDER 11 U.S.C. § 543(c)(3)**

D. Ray Strong, the duly appointed Chapter 11 Trustee (the "Trustee") for Castle Arch Real Estate Investment Company, LLC ("CAREIC"), and in that capacity as Manager, either directly or indirectly of the other above-captioned Debtors (CAREIC and these Debtors

collectively being the “Debtors”), hereby files this (1) objection to the *Motion for Discharge and Payment of Fees—Discharge and Payment in Full under 11 U.S.C. §543 [sic] by Pre-Petition Receiver or Other Custodian* [Docket No. 526] (the “Waddoups Motion”) filed by Trent J. Waddoups (“Waddoups”), and (2) request under 11 U.S.C. § 543(c)(3) that the Court surcharge Waddoups for all unauthorized payments he made while acting as receiver for CAREIC. In support hereof, the Trustee states as follows:

BACKGROUND

Debtors’ Bankruptcy Cases

1. On October 17, 2011, CAREIC filed a petition seeking relief under Chapter 11 of the Bankruptcy Code¹ (“CAREIC’s Petition Date”).
2. On October 20, 2011, each of the other above-captioned Debtors also filed petitions under Chapter 11 of the Bankruptcy Code.
3. The Debtors’ respective Chapter 11 cases are being jointly administered.
4. After their respective bankruptcy filings, the Debtors continued to operate their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.
5. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC, and in that capacity, the Trustee manages, either directly or indirectly, the Debtors.
6. On December 28, 2012, the Trustee filed a motion seeking to substantively consolidate some of the Debtors’ cases [Docket No. 537], which motion is currently scheduled to be heard by the Court on January 31, 2013.

¹ 11 U.S.C. § 101, *et seq.*

State Court Receivership

7. On or about June 18, 2010, The Hunt Law Corporation, P.C., which is apparently a dba of David S. Hunt, P.C. (“Hunt”), filed a complaint against CAREIC in the Second Judicial District for the State of Utah (the “State Court”) seeking the appointment of a receiver over CAREIC, which case was assigned Case No. 100700353 (the “State Court Proceeding”).

8. On or about July 12, 2011, the State Court entered an order (the “Receiver Order”) appointing Waddoups as the receiver for CAREIC.² A copy of the Receiver Order is attached hereto as Exhibit 1.

9. Among other things, the Receiver Order provided that Waddoups could “engage and employ persons in her [sic] discretion to assist her in carrying out her duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, . . .”³

10. The Receiver Order, however, expressly mandates that “[a]ll applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth reasonable detail the nature of the services and shall be heard by the Court.”⁴

² It appears that eventually each of the other Debtors intervened in the State Court Proceeding.

³ Receiver Order at 3. The Receiver Order uses feminine pronouns in references to Waddoups throughout the entire document.

⁴ Receiver Order at 6. The Receiver Order also contains a curious, and apparently misplaced, provision regarding the payment of Waddoups’ fees and expenses. Specifically, its states:

In the event that a Bankruptcy petition is filed on behalf of the Entities, the bankruptcy reference shall be withdrawn with regard to payment of fees and expenses of the Receiver, her attorneys, accountants, consultants, and any other person or entity hired to assist the Receiver in the execution of her duties pursuant to this Order, and this Court shall retain jurisdiction over the payment of such fees and expenses.

11. The Receiver Order also provided that if Waddoups “deems it to be the appropriate course of action” then he was authorized to “take any action which she deem [sic] to be necessary and appropriate in order to cause the Entities to file a bankruptcy petition under any chapter of Title 11 of the United States Code, including the execution of all necessary corporate resolutions or directions.”⁵

Pre-Petition Payments

12. According to CAREIC’s books and records, prior to the CAREIC Petition Date, Waddoups and/or his law firm—Carr & Waddoups—received \$115,000 in legal retainers⁶ and an additional \$6,250 in “payroll” from CAREIC.

13. Based on the register of Carr & Waddoups’ client trust account that Waddoups provided to the Trustee (the “CW Trust Account Ledger”), a copy of which is attached hereto as Exhibit 2, it appears that Waddoups used the funds transferred to him pre-petition to make payments to himself and other entities employed by him in the State Court Proceeding.

14. Specifically, it appears that, prior to the CAREIC Petition Date, Waddoups paid \$48,116.10 to Carr & Waddoups, \$18,848.00 to Independent Paralegal Consulting (through either Robert or Dan Benson), and \$5,980.00 to Hunt⁷ for a total of \$72,944.10 in pre-petition

Receiver Order at 4. Clearly, this provision is not appropriate as a state court cannot withdraw the United States District Court’s reference of bankruptcy cases and proceedings to the Bankruptcy Court or otherwise cause it to be withdrawn to the District Court.

⁵ Receiver Order at 3.

⁶ See also Notice of Accounting (as defined below) at 9-10.

⁷ It appears that, notwithstanding the fact that Hunt was an adverse party in the State Court Proceeding, Waddoups employed him as legal counsel on behalf of CAREIC. See Notice of Accounting at 8.

payments (the “Pre-Petition Payments”).⁸

15. Waddoups never received authorization from the State Court to make any of the Pre-Petition Payments, as required by the Receiver Order.

16. Indeed, on September 9, 2011, Waddoups filed an application for payment of fees and expenses with the State Court seeking permission to pay approximately \$23,000 to Carr & Waddoups, DB Consulting, and Independent Paralegal Consulting. On September 23, 2011, however, the State Court denied this request by “unsigned” the proposed order on the fee application. A copy of this unsigned Order is attached hereto as Exhibit 3.

17. On or about October 3, 2011, approximately two weeks before CAREIC’s Petition Date, Waddoups filed a second fee application with the State Court this time seeking to pay Carr & Waddoups and Independent Paralegal Consulting approximately \$17,000. No order was ever entered on this second application prior to the CAREIC Petition Date.

Post-Petition Payments

18. Notwithstanding bankruptcy law including application of the automatic stay, it appears Waddoups continued to make disbursements of the funds he received pre-petition after the CAREIC Petition Date.

19. Specifically, based on the CW Trust Account Ledger, Waddoups made \$17,510.50 in payments to Carr & Waddoups and \$12,904.50 in payments to Independent Paralegal Consulting after the CAREIC Petition Date.⁹ Further, based on CAREIC’s books and records, it also appears that Waddoups caused CAREIC to transfer to Trent Waddoups, P.C. an

⁸ See Exhibit 2 (CW Trust Account Ledger at 1).

⁹ See Exhibit 2 (CW Trust Account Ledger at 1).

additional \$12,500 for “payroll.” Thus, it appears that Waddoups made a total of \$42,915.00 in disbursements after the CAREIC Petition Date (the “Post-Petition Payments”).

20. Waddoups never received permission from this Court or the State Court to make any of the Post-Petition Payments.

Waddoups’ Prior Request for a Discharge and Accounting

21. On December 13, 2011, Waddoups filed his *Motion for (1) Relief from Automatic Stay Under 11 U.S.C. §362, and (2) Relief from Turnover Under 11 U.S.C. §543 by Pre-Petition Receiver or Other Custodian* [Docket No. 25] (the “Stay Relief Motion”) seeking an annulment of the automatic stay retroactively and asking that he be excused from the requirements of Section 543.¹⁰

22. The Court denied the Stay Relief Motion without prejudice by Order entered January 19, 2012.¹¹

23. On January 3, 2012, Waddoups filed with the Court his *Notice of Accounting for Services Rendered, Costs Incurred, and Consultants Employed by Pre-Petition Receiver or Other Custodian* [Docket No. 35] (the “Notice of Accounting”).

24. The Notice of Accounting contains a summary of the services that Waddoups and those employed by him purportedly provided to the Debtors in the State Court Proceeding.¹²

25. Pursuant to the Notice of Accounting, Waddoups acknowledges that starting October 1, 2011, and continuing until at least November 30, 2011, Waddoups paid himself a

¹⁰ See generally Stay Relief Motion and Exhibit A attached thereto.

¹¹ See Docket No. 43.

¹² See Notice of Accounting at 8-9.

salary as an employee of CAREIC based on his claim that he was serving as CAREIC's "CEO and President."¹³ Waddoups does not, however, explain how his service as the "CEO and President" for CAREIC differed from his obligations as the receiver, why a \$12,500 monthly salary was reasonable and appropriate, or why it was necessary to appoint himself the CEO and President in the first place.¹⁴

26. At no point in the Notice of Accounting does Waddoups disclose that he had made either the Pre-Petition or Post-Petition Payments.

27. While the Notice of Accounting discloses that Waddoups had received \$115,000 in retainers from CAREIC prior to the bankruptcy case,¹⁵ it does not disclose whether any of the retainers remain or account for their usage.

Waddoups Motion

28. On December 14, 2012, Waddoups filed the present Waddoups Motion.

29. Pursuant to the Waddoups Motion, Waddoups appears to be requesting: (a) a finding by the Court that Waddoups has complied with all requirements under Section 543; (b) payment in the amount of \$17,165.00; and (c) relief from the automatic stay to permit the State Court to terminate the State Court Proceeding and discharge Waddoups.¹⁶

¹³ See *id.* at 7.

¹⁴ On December 20, 2011, Waddoups filed an *Objection To: (1) Motion for Authorization to Employ Counsel; and (2) Motion for Order Authorizing Retainer* [Docket No. 30], attached to which are Board Resolutions appointing himself as CEO and President, and requiring himself to comply with 11 U.S.C. § 543.

¹⁵ See Notice of Accounting at 9-10.

¹⁶ See generally Waddoups Motion and Exhibit A attached thereto.

30. Although the Waddoups Motion makes reference to a request for relief from the automatic stay to “terminate” the State Court Proceeding,¹⁷ Waddoups does not cite any basis for, or authority in support of, his request for relief from the automatic stay.

31. The proposed order attached as Exhibit A to the Waddoups Motion states in a footnote that “the total expenses of the Receivership: \$120,524.10.”¹⁸ Waddoups, however, does not explain how he arrived at this total or what this amount includes.

OBJECTION AND REQUEST FOR SURCHARGE

For the reasons discussed herein, the Trustee respectfully requests that the Court deny the Waddoups Motion. The Trustee also requests that the Court surcharge Waddoups under 11 U.S.C. § 543(c)(3) for the full amount of the Pre-Petition and Post-Petition Payments because such payments were not proper or authorized. Finally, the Trustee requests that the Court deny Waddoups’ request for relief from the automatic stay and instead discharge him from his duties as the receiver without finding that he has complied with the provisions of the Bankruptcy Code or is otherwise absolved of any liability to the Debtors.¹⁹

¹⁷ See Waddoups Motion at 6.

¹⁸ See Waddoups Motion, Exhibit A attached thereto at 2.

¹⁹ The Trustee may have additional claims against Waddoups. The Trustee is very concerned by Waddoups’ lack of experience as a receiver and the relationship between him and Hunt. The Receiver is also concerned by Waddoups’ decision as a fiduciary to employ Independent Paralegal Consulting. Upon information and belief, it appears that paralegal Robert Benson was formerly an attorney but that he was disbarred by the State of Tennessee in 2004 related to convictions for bankruptcy fraud. The Trustee’s investigation into these matters continues and he reserves the right to bring any other claims against Waddoups as appropriate.

A. Section 543 of the Bankruptcy Code Governs the Conduct and Payment of Receivers in Bankruptcy Proceedings

Section 543 of the Bankruptcy Code governs how a receiver—known as a “custodian”²⁰ in the Bankruptcy Code—is treated once a bankruptcy is filed. Upon the filing of the bankruptcy petition, the receiver becomes known as a “superseded custodian” and is prohibited from making any disbursements of receivership property except to the extent necessary to preserve such property.²¹ Further, Section 543 expressly limits the receiver’s actions to (1) turning over to the debtor-in-possession all property in the receiver’s possession, custody, or control as soon as he acquires knowledge of the bankruptcy filing;²² and (2) filing an accounting with the bankruptcy court of all property that was in the receiver’s possession, custody, or control at any time during the receivership.²³ The receiver’s actions post-petition are limited to these two acts unless the bankruptcy court, after notice and a hearing, allows the receiver to maintain possession of, and control over, the receivership property.²⁴

The Bankruptcy Code governs the compensation that is awarded to a receiver of an entity placed into bankruptcy. For pre-petition fees and expenses, Section 503(b)(3)(E) provides that the receiver has an administrative expense for his actual and necessary expenses and for compensation for his pre-petition services as a receiver.²⁵ In reviewing an application for a

²⁰ See definition of “custodian” in 11 U.S.C. § 101(11).

²¹ See 11 U.S.C. § 543(a).

²² See 11 U.S.C. § 543(b)(1).

²³ See 11 U.S.C. § 543(b)(2).

²⁴ See 11 U.S.C. § 543(d).

²⁵ See 11 U.S.C. § 503(b)(3)(E).

Section 503(b)(3)(E) claim, the bankruptcy court is entitled to “review the quality of a receiver’s performance.”²⁶ Likewise, Section 503(b)(4) states that the attorney or accountant of a receiver is entitled to an administrative expense claim for reasonable compensation and their actual and necessary expenses.²⁷

The payment of a receiver’s post-petition fees and services are governed by Section 543(c)(1) and (2).²⁸ Section 543(c)(1) provides that, after notice and a hearing, the bankruptcy court shall “protect all entities to which a custodian has become obligated.”²⁹ This provision has been interpreted to mean that the debtor-in-possession may, with court approval, pay the unpaid bills of persons hired by the receiver.³⁰ Similarly, Section 543(c)(2) states that, after notice and a hearing, the bankruptcy court shall “provide for the payment of reasonable compensation for services and costs and expenses incurred by such custodian.”³¹

Although post-petition “the receiver remains subject to the terms of the prepetition orders of appointment. . . ,” the bankruptcy court “has supervisory power over a receiver and supersedes the authority of the state or federal court which appointed the receiver.”³² Consequently, the

²⁶ *In re Sundance Corp., Inc.*, 149 B.R. 641, 650 (Bankr. E.D. Wash. 1993).

²⁷ *See* 11 U.S.C. § 503(b)(4).

²⁸ At least one court, in an unpublished decision, has ruled that a receiver who voluntarily puts a debtor into bankruptcy is not a “superseded custodian” and, therefore, is not entitled to payment of his pre-petition fees and costs as an administrative expense under Section 503(b)(3)(E). *See In re Statepark Building Group, Ltd.*, 2005 Bankr. LEXIS 1248 at *9-10 (Bankr. N.D. Tex., June 29, 2005). Rather, any such claim would be treated as a general unsecured claim. *See id.*

²⁹ *See* 11 U.S.C. § 543(c)(1).

³⁰ *See, e.g., In re Wayne Eng’g Corp.*, 2007 Bankr. LEXIS 787 at *7-9 (Bankr. N.D. Iowa, Mar. 5, 2007).

³¹ *See* 11 U.S.C. § 543(c)(2).

³² *In re 400 Madison Ave. L.P.*, 213 B.R. 888, 898 (Bankr. S.D.N.Y. 1997).

bankruptcy court “may issue such additional orders or amendments of prior orders as it deems appropriate to govern the receiver’s management of estate property.”³³

Moreover, despite the fact that a receiver is appointed by a state court, the bankruptcy court possesses the authority to review the quality of a receiver’s performance in determining whether to award the receiver compensation. “Through § 543(c) and § 503(b)(3)(E) Congress gave the bankruptcy courts power to decide all issues concerning charges against that property.”³⁴ Indeed, “pursuant to § 543(c) and § 503(b)(3)(E), [the bankruptcy] court has jurisdiction to review and, if necessary, surcharge [the receiver] regarding the performance of its state court duties.”³⁵ Under both Sections 503(b)(3)(E) and 543(c) courts impose a requirement that the services for which compensation and reimbursement is sought must have benefitted the estate.³⁶

B. The Court Should Deny the Waddoups Motion and Surcharge Waddoups for All Improper Payments

The Court should deny the Waddoups Motion and surcharge Waddoups for full amount of the Pre-Petition Payments and Post-Petition Payments because Waddoups was not authorized to make such payments. Section 543(c)(3) states that the court, after notice and a hearing, may surcharge the receiver for “any improper or excessive disbursement, other than a disbursement that has been made in accordance with applicable law or that has been approved, after notice and

³³ *Id.*

³⁴ *Sundance*, 149 B.R. at 650.

³⁵ *Id.*

³⁶ *See, e.g., Szwak v. Earwood (In re Bodenheimer, Jones, Szwak, & Winchell L.L.P.)*, 592 F.3d 664, 672 (5th Cir. 2009).

a hearing, by a court of competent jurisdiction before the commencement of the case under this title.”³⁷ As one court has explained, “[a] receiver may be liable to an estate for failure of its stewardship, and if the estate is harmed the receiver may be surcharged.”³⁸ Courts have held that surcharge under Section 543(c)(3) applies to both pre- and post-petition disbursements.³⁹

1. The Pre-Petition Payments Were Not Authorized

The Court should surcharge Waddoups in the full amount of the Pre-Petition Payments because Waddoups was not authorized to make such payments. As discussed above, the bankruptcy court may surcharge the receiver for any “*improper* or excessive distributions.”⁴⁰ The Receiver Order required that “[a]ll applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth reasonable detail the nature of the services and shall be heard by the Court.”⁴¹ Thus, prior to the commencement of the bankruptcy proceeding, Waddoups was required to seek and obtain approval from the State Court before making any payments to himself or others employed by him in the state court receivership.

All pre-petition disbursements that Waddoups made were improper because the State Court never authorized Waddoups to make any payments to himself, his law firm, or any person or entity that he employed. As noted above, on September 9, 2011, Waddoups filed an

³⁷ See 11 U.S.C. § 543(c)(3).

³⁸ *Sundance*, 149 B.R. at 653.

³⁹ See *Sundance*, 149 B.R. at 653; see also *In re China Village, LLC*, 2012 Bankr. LEXIS 105, at *20-21 (Bankr. N.D. Cal., Jan. 4, 2012).

⁴⁰ 11 U.S.C. § 543(c)(3) (emphasis added).

⁴¹ Receiver Order at 6.

application with the State Court seeking permission to pay approximately \$23,000 to Carr & Waddoups, DB Consulting, and Independent Paralegal Consulting. On September 23, 2011, the State Court denied this request by “unsigned” the proposed order on the fee application.⁴² Waddoups then filed a second fee application on October 3, 2011, this time seeking to pay Carr & Waddoups and Independent Paralegal Consulting approximately \$17,000. No order was ever entered on this application prior to the CAREIC Petition Date. Thus, at no point in time was Waddoups ever authorized to make any disbursements from the CAREIC receivership estate and each of the Pre-Petition Payments was expressly forbidden under the Receiver Order.

Waddoups was a court-appointed fiduciary tasked with preserving the assets of the Debtors and ensuring that proper procedures were followed in accordance with the Receiver Order. Waddoups, however, failed to comply with his obligations by making the unauthorized Pre-Petition Payments to himself and other parties. The Court, therefore, should deny the Waddoups Motion and instead surcharge Waddoups in the full amount of the Pre-Petition Payments.

2. The Post-Petition Payments also Warrant a Surcharge Against Waddoups

Likewise, the Court should also deny the Waddoups Motion and surcharge Waddoups on account of the unauthorized Post-Petition Payments. As discussed above, Section 543(a) prohibited Waddoups from making the Post-Petition Payments by expressly limiting his actions to turning over property of the estate and filing an accounting with the Court.⁴³ Receivers and those employed by them that desire to receive payment for post-petition services are required to

⁴² See Exhibit 3.

⁴³ See 11 U.S.C. § 543(a).

follow the procedures mandated by Sections 543(c)(1) and (2). Waddoups, however, chose instead to forgo these procedures by making the Post-Petition Payments to himself and Independent Paralegal Consulting. Such payments were improper for purposes of surcharging Waddoups in accordance with Section 543(c)(3).⁴⁴ The Court, therefore, should deny the Waddoups Motion and surcharge Waddoups in the full amount of the Post-Petition Payments.

C. Waddoups Should Be Relieved of the Ability to Act on Behalf of any of the Debtors

The Waddoups Motion requests that the automatic stay be terminated so that Waddoups may seek a discharge from the State Court. The Trustee submits that such action is unnecessary. As one court has explained, “[t]hrough § 543, Congress has apparently authorized bankruptcy courts to review *and conclude* matters relating to a state court receivership.”⁴⁵ Thus, the Trustee submits that it would be proper and more efficient for this Court to relieve Waddoups of his duties as receiver rather than lifting the stay, which would have the effect of allowing Waddoups to purportedly act on behalf of the Debtors notwithstanding the appointment of the Trustee. Accordingly, rather than lifting the automatic stay, the Trustee proposes that the Court enter an order relieving Waddoups of his duties as receiver, terminating his authority to act on behalf of the Debtors, and otherwise discharging him without finding that he has complied with Section 543 or that he is otherwise absolved of any liability to the Debtors.

⁴⁴ These Post-Petition Payments from property of the estate are also avoidable pursuant to 11 U.S.C. §549 as unauthorized transfers. This issue is not before the Court as part of the Motion to Surcharge, but is relevant nonetheless.

⁴⁵ *Sundance*, 149 B.R. at 649-50 (emphasis added).

CONCLUSION

For the reasons set forth herein, the Trustee requests that the Court deny the Waddoups Motion and (1) surcharge Waddoups for the full amount of the Pre-Petition Payments and Post-Petition Payments; and (2) relieve Waddoups of his duties as the receiver and terminate his authority to act on behalf of the Debtors, as requested herein. The Trustee also requests such further relief as is just and proper.

DATED this 17th day of January, 2013.

DORSEY & WHITNEY LLP

/s/ Scott A. Cummings

Peggy Hunt

Scott A. Cummings

Nathan S. Seim

Attorneys for D. Ray Strong, Chapter 11

Trustee for Castle Arch Real Estate

Investment Company, LLC

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on January 17, 2013, I electronically filed the foregoing **CHAPTER 11 TRUSTEE’S (1) OBJECTION TO MOTION FOR DISCHARGE AND PAYMENT OF FEES FILED BY TRENT J. WADDOUPS, AND (2) REQUEST FOR SURCHAGE UNDER 11 U.S.C. § 543(c)(3)** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com, debbie@princeyeates.com;docket@princeyeates.com
- Troy J. Aramburu taramburu@swlaw.com, cmeehan@swlaw.com;docket_slc@swlaw.com
- Jeffrey M Armington armington.jeff@dorsey.com
- Julie A. Bryan julie@crslaw.com, diana@crslaw.com;josh@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com, ckelly@hollandhart.com;intaketteam@hollandhart.com;slclitdocket@hollandhart.com
- Leonard J. Carson len@pearsonbutler.com, madisyn@pearsonbutler.com;kylie@pearsonbutler.com;maryann@pearsonbutler.com;geoff@pearsonbutler.com
- Andrew B. Clawson andrew@abclawutah.com, len@pearsonbutler.com;maryann@pearsonbutler.com;kylie@pearsonbutler.com;madisyn@pearsonbutler.com
- Victor P Copeland vpc@pkhlawyers.com, dh@pkhlawyers.com
- T. Edward Cundick tec@princeyeates.com, nancyw@princeyeates.com;docket@princeyeates.com
- Anna W. Drake annadrake@att.net
- David R. Hague dhague@fabianlaw.com, dromero@fabianlaw.com
- George B. Hofmann gbh@pkhlawyers.com, dh@pkhlawyers.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com;smith.ron@dorsey.com;slc.lit@dorsey.com
- Lon A. Jenkins lajenkins@joneswaldo.com, ecf@joneswaldo.com;jpollard@joneswaldo.com;hdoherty@joneswaldo.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Michael L. Labertew michael@labertewlaw.com
- Christopher J Martinez martinez.chris@dorsey.com
- Adelaide Maudsley maudsley@chapman.com, jemery@chapman.com

- John T. Morgan tr john.t.morgan@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Rinehart.Peshell@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Oliver K. Myers myersok@msn.com
- Knute A. Rife KARife@RifeLegal.com
- Nathan Seim seim.nathan@dorsey.com
- Jeremy C. Sink jeremy@mbt-law.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com;docket@rqn.com
- D. Ray Strong tr rstrong@brg-expert.com
- Marca Tanner marca.tanner@gmail.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Kim R. Wilson bankruptcy_krw@scmlaw.com
- Brock N. Worthen bworthen@joneswaldo.com

CERTIFICATE OF SERVICE – MAIL, OTHER

I hereby certify that on January 17, 2013, I caused to be served a true and correct copy of the foregoing **CHAPTER 11 TRUSTEE’S (1) OBJECTION TO MOTION FOR DISCHARGE AND PAYMENT OF FEES FILED BY TRENT J. WADDOUPS, AND (2) REQUEST FOR SURCHARGE UNDER 11 U.S.C. § 543(c)(3)** as follows:

Mail Service – By regular first class United States Mail, postage fully pre-paid, addressed to:

Trent J. Waddoups
Carr & Waddoups
8 East Broadway, Suite 609
Salt Lake City, Utah 84111

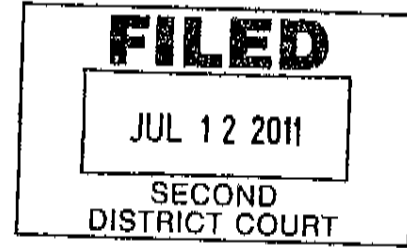
Other – By electronic mail

Trent J. Waddoups
trent@cw-law.net

/s/ Scott A. Cummings

Exhibit 1

Jerrald D. Conder (0709)
341 South Main Street, Suite 406
Salt Lake City, Utah 84111
Telephone 801-359-5534
Facsimile 801-746-5613
Attorney for Petitioner



**IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH**

THE HUNT LAW CORPORATION, P.C., a
dba of DAVID S. HUNT, P.C., a Utah
professional corporation,

Petitioner,

vs.

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, L.L.C., a
California limited liability company,

Respondent.

~~(proposed)~~ **ORDER APPOINTING
A RECEIVER**

**Civil No. 100700353
Honorable David Connors**

WHEREAS this matter came before the Court upon motion of the Petitioner The Hunt Law Corporation, P.C. ("Petitioner") to appoint a receiver for the purpose of marshaling and preserving assets in the above-captioned action; and

WHEREAS the Court has heard evidence that the appointment of a Receiver in this action is necessary and appropriate; and

WHEREAS certain assets are in danger of having their value reduced by the passage of time, and it is appropriate that the assets be marshaled and an accounting provided to the Court; and

WHEREAS, this Court has jurisdiction over the subject matter of this action and Respondent, and venue properly lies in this district.

NOW THEREFORE:**I.**

IT IS HEREBY ORDERED that, pending such time as the Court may order, Trent J. Waddoups, Esq. be appointed Receiver ("the Receiver") of the Respondent the Castle Arch Real Estate Investment Company, L.L.C. and subsidiaries over which the Respondent has management or voting control (the "Entities"). The Receiver shall take control of the Entities' funds, assets and property wherever situated, with the powers set forth herein, including powers over all funds, assets, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, and other property belonging to or in the possession of or control of the Entities, and the Receiver is hereby authorized, empowered, and directed:

a. to have access to, to marshal and take control of all funds, assets, premises (whether owned, leased, occupied or otherwise controlled), choses in action, papers, books, records in whatever media, and other property, wherever located, belonging to, in the custody, control or possession of the Entities, with full power to take such steps as he deems necessary to secure such premises, funds and property;

b. to have control of, and to close, transfer or otherwise take possession of all accounts, securities, funds, or other assets of, or in the name of the Entities at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds of the Entities, or of any assets deposited by customers or clients with the Entities, or into an account in the name of the Entities, or held in trust or deposited with the Entities or its agents or trustees, wherever situated;

c. to take such action as is necessary and appropriate to preserve and take control of, and to prevent the dissipation, concealment, or disposition of any assets in the possession, custody, name, or control of the Entities;

d. to hold in her possession, custody and control all assets, securities, monies and property, together with all profits, dividends, interest or other income attributable thereto, of whatever kind deposited by the Entities, with the Entities, or into an account in the name of the Entities, pending further order of this Court;

e. to make or authorize such payments and disbursements from the funds and assets under her control pursuant to this Order, and to incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging her duties as Receiver;

f. to engage and employ persons in her discretion to assist her in carrying out her duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers.

g. to take possession, have access to, and to review all mail or any other communication, in any form, of the Entities or of its agents, officers and directors;

h. if she deems it to be the appropriate course of action, to take any action which she deem to be necessary and appropriate in order to cause the Entities to file a bankruptcy petition under any chapter of Title 11 of the United States Code, including the execution of all necessary corporate resolutions or directions. The Respondent or any other person affiliated with the Entities or purporting to act on behalf of the Entities may not file a bankruptcy petition under any chapter of Title 11 of the United States Code on behalf of the Entities or under any analogous

law of any other jurisdiction. In the event that a Bankruptcy petition is filed on behalf of the Entities, the bankruptcy reference shall be withdrawn with regard to payment of fees and expenses of the Receiver, her attorneys, accountants, consultants and any other person or entity hired to assist the Receiver in the execution of her duties pursuant to this Order, and this Court shall retain jurisdiction over the payment of such fees and expenses;

i. if she deems it to be the appropriate course of action, to take any action alternative to, and instead of, a bankruptcy proceeding which she deem to be necessary and appropriate in order to reorganize the business, operations or capitalization of the Entities or to facilitate a total or partial liquidation of the Entities.

j. to make demand, file or otherwise handle any claim under any insurance policy held by or issued on behalf of the Entities, its officers, directors, agents, employees, trustees or other persons affiliated with the Entities and to take any and all appropriate steps in connection with such policies.

II.

IT IS HEREBY FURTHER ORDERED that, in connection with the appointment of the Receiver provided for above:

a. the Entities and all officers, agents, servants, employees, attorneys-in-fact, shareholders, consultants, accountants, advisers, counsel and other persons, and Respondent in this action, who are in custody, possession, or control of any customer or client information, assets, books, records, or other property belonging to or in the custody or control of the Entities shall forthwith give access to and control of such property to the Receiver, and shall forthwith grant to the Receiver, or such other person whom the Receiver may designate, authorization to be the signatory as to all accounts at banks, brokerage firms or financial institutions which have

possession, custody or control of any assets or funds in the name of or for the benefit of the Entities.

b. The Receiver is authorized, empowered, and directed without further leave of the Court, to liquidate and convert into money all of the assets, property, estate, effects and interests of every nature held in her possession and control pursuant to this Order, by selling, conveying, and disposing of the property, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the persons or parties entitled to the proceeds, and with due regard to the realization of their true and proper value and to deposit such proceeds into an account, pending further order of the Court.

c. The Receiver is authorized to invest any and all money or proceeds in her possession and control in United States Treasury instruments or in a money market account that invests solely in United States Treasury instruments.

d. All banks, brokerage firms, financial institutions, and other business the Entities which have possession, custody or control of any assets, funds or accounts in the name of or for the benefit of the Entities shall cooperate expeditiously in the transfer of funds, other assets and accounts to the Receiver or at the direction of the Receiver.

e. All banks, brokers, dealers, depositories or any other financial institutions shall not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Entities except upon instructions from the Receiver or her designees.

f. The Receiver shall have the authority to issue subpoenas for documents and testimony consistent with the Utah Rules of Civil Procedure.

g. Respondent and their respective officers, agents, servants, employees, and attorneys-in-fact, consultants, accountants, advisers and counsel shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, by appearing for deposition testimony and producing documents, and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of her duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above.

h. The costs, fees and expenses of the Receiver incurred in connection with the performance of her duties described herein, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist her in carrying out her duties and obligations hereunder shall be paid out of the proceeds or other assets of the Entities, or any and all assets under the control of the Receiver pursuant to this Order. All applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court. The court-appointed receiver shall submit her fee application to counsel for the Petitioner for review at least ten (10) days prior to filing the application with the Court.

i. No bond shall be required in connection with the appointment of the Receiver. The Receiver and all other persons who may be engaged or employed by the Receiver to assist her in carrying out her duties and obligations hereunder shall not be liable for any act or omission of the Receiver or such person, respectively, or any of their partners, employees, or agents, unless it shall be proven that the Receiver or such other person acted or omitted to act willfully and in bad faith. This provision shall apply to claims based on conduct of the Receiver and all other persons

who may be engaged or employed by the Receiver hereunder during the term of the appointment by this Court, even if such claims are filed after the termination of any such appointment.

III.

IT IS HEREBY FURTHER ORDERED that, pending the determination of the Petitioner's action on the merits, representatives of the Receiver are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of the Entities, including records relating to any accounts maintained by or in the name of the Entities at a broker, dealer, financial institution, depository institution or any other entity, or of accounts maintained on behalf of the Entities' customers or clients that have transferred, transmitted or otherwise delivered any securities, monies, or property of any kind, to the Entities, and continuing access to inspect the Entities funds, property and assets, including customer or client accounts, wherever they may be located.

IV.

IT IS HEREBY FURTHER ORDERED that, in addition to the powers, duties and responsibilities as set forth herein, the Receiver shall be authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and adjust actions in any state, federal or foreign court or proceeding of any kind as may in her sole discretion be advisable or proper to recover or conserve funds, assets and property of the Entities.

V.

IT IS HEREBY FURTHER ORDERED that the Entities and its officers, directors, employees, agents and counsel shall transfer to the Receiver, as and when directed by him, any and all funds, property, documents or records of the Entities, in whatever form, that may be in

their possession, custody or control; and that any signatories on any and all the Entities' accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Entities, shall forthwith take all steps necessary to relinquish their signatory authority as to said accounts including, but not limited to, accounts containing securities or other assets that the Entities' customers have transferred, transmitted or otherwise delivered to the Entities.

VI.

The following acts are stayed pending further order of this Court:

(i) the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding, other than actions of the Petitioner related to the above-captioned enforcement action, against the Entities;

(ii) the enforcement against the Entities against property now held in the name of or by the Entities, of any judgment obtained before the filing of the Complaint in this action;

(iii) any act to obtain possession of property held by the Entities or to exercise control over property held by the Entities;

(iv) any act to create, perfect or enforce any lien against property held by the Entities or Southwick;

(v) any act to collect, assess or recover any claims related to the Entities, or against property held by the Entities; and,

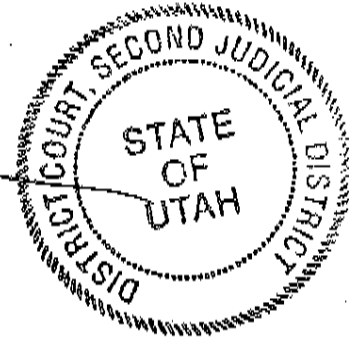
(vi) the exercise of any rights of setoff or recoupment.

VI.

IT IS FURTHER ORDERED that this Order shall remain in effect and shall supplement all prior Orders of this Court until further Order of this Court. The Court shall retain jurisdiction of this matter for all purposes.

Dated this 12th day of ~~June~~^{July}, 2011.


District Court Judge



Approved as to Form

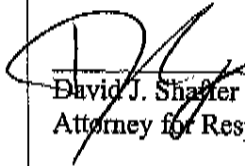

David J. Shafter
Attorney for Respondent

Exhibit 2

Register: Client Trust Account
 From 04/01/2011 through 11/28/2012
 Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment	C
08/18/2011	1019	Robert Benson	Professional Fees	Castle Arch	4,716.00	
09/06/2011	1020	Carr & Waddoups At...	Ask My Accountant	fee Castle Arch	17,995.20	
09/14/2011	1021	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
09/16/2011	1022	Robert Benson	Professional Fees	Castle Arch	2,007.00	
10/05/2011	1023	Robert Benson	Professional Fees	9/15/11 - 10/7/...	7,911.00	
10/05/2011	1024	Carr & Waddoups At...	Professional Fees	Caste Arch fees	14,816.50	
10/05/2011	1025	Carr & Waddoups At...	Professional Fees	Castle Arch fees	12,356.90	
10/14/2011	1026	The Hunt Law Corpo...	Professional Fees	Castle Arch Co...	5,980.00	
10/14/2011	1027	Dan Benson	Professional Fees	Castle Arch Co...	290.00	
10/14/2011	1028	Robert Benson	Professional Fees	Castle Arch - I...	3,924.00	
10/14/2011	1029	Carr & Waddoups At...	Professional Fees	Castle Arch Fees	2,947.50	
11/10/2011	1030	Carr & Waddoups At...	Professional Fees	Castle Arch Fees	11,863.00	
11/10/2011	1032	Robert Benson	Professional Fees	Castle Arch Fees	10,501.50	
12/06/2011	1033	Carr & Waddoups At...	Professional Fees	Castle Arch	5,647.50	
12/06/2011	1034	Robert Benson	Professional Fees	Castle Arch	2,403.00	
07/11/2012	1035	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
07/31/2012	1036	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
08/31/2012	1037	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Exhibit 3

RECEIVED
SEP 09 2011
By _____

FILED
SEP 23 2011
SECOND DISTRICT COURT

Trent J. Waddoups - (Bar No. 7657)

CARR & WADDOUPS
ATTORNEYS AT LAW, L.L.C.

8 East Broadway, Suite 609
Salt Lake City, Utah 84111

Telephone: (801) 363-0888

Fax: (801) 363-8512

email: trent@cw-law.net

Receiver for Castle Arch Real Estate Investment Co., LLC

IN THE SECOND JUDICIAL DISTRICT
IN AND FOR DAVIS COUNTY, STATE OF UTAH

THE HUNT LAW CORPORATION, P.C.,
a dba of DAVID S. HUNT, P.C., a Utah
professional corporation,

Petitioner,

vs.

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, L.L.C., a
California limited liability company,

Respondent.

**APPROVAL OF RECEIVER'S
APPLICATION TO PAY FEES,
COSTS AND EXPENSES -
FIRST**

Civil No. 100700353

Judge David Connors

THIS MATTER having come before the Court on the Receiver's Application to Pay Fees, Costs and Expenses - First;

THE COURT BEING fully advised in the premises and Petitioner having no objection to the same and having waived any time period to raise such objections;

IT IS THEREFORE ORDERED that the Receiver's Application to Pay Fees,

Costs and Expenses - First be and is hereby approved, and the Receiver is authorized to act in accordance with the same.

unsigned

HONORABLE DAVID CONNORS
DISTRICT COURT JUDGE

CLERK'S MAILING CERTIFICATE

I HEREBY CERTIFY that I caused a true and correct copy of the above and foregoing SIGNED ORDER to be mailed, postage prepaid, this ____ day of September, 2011, to:

David S. Hunt
DAVID S. HUNT, P.C.
66 Exchange Place
Salt Lake City, Utah 84111

Trent J. Waddoups
RECEIVER for CASTLE ARCH
8 East Broadway, Suite 609
Salt Lake City, Utah 84111

David Shaffer
SHAFFER LAW OFFICE, P.C.
562 South Main Street
Bountiful, Utah 84010

Jerrald D. Conder
341 South Main Street
Suite 406
Salt Lake City, Utah 84111

DATED this ____ day of September, 2011.

CLERK