

## CHAPTER 2

### Receivership Proceedings

#### SECTIONS

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**Editor's note:** This chapter on Receivership Proceedings was created by PL 13-73 § 15.

#### **§201. Approval of application; Suspension or dismissal of pending receivership.**

(1) Any application for the appointment of a receiver shall be filed as provided in sections 103 and 104 of this subtitle. Upon such application, the court shall appoint a receiver within such time as the court shall prescribe if:

- (a) there is no objection by any Interested Party; or
- (b) the court finds that the party or parties objecting to the application have failed to establish that
  - (i) the allegations of the application are insufficient as a matter of law, or
  - (ii) it is in the best interests of the debtor and the creditors that the application be dismissed.

(2) Notwithstanding subsection (1) of this section, the court may deny the application, dismiss a pending receivership, or suspend a pending receivership if it finds that such denial, dismissal or suspension is in the best interests of the debtor and its creditors. If the court finds that an application under this subtitle has been filed in bad faith, it may award to interested parties injured thereby their reasonable costs and attorneys fees to be paid by the filing parties.

**Source:** PL 13-73 § 16.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

**Case annotations:** The court may dismiss a bankruptcy application if it is in "the best interests of the debtor and the creditors" or if the debtor's application was in bad faith. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

It may be that the Bankruptcy Code's only remedy for unauthorized transfers of property in the debtor's estate after the start of a bankruptcy case is to dismiss the case without a discharge of the debtor's debts. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

A debtor in bankruptcy is required to cooperate with the receiver, and his failure to cooperate with the receiver may subject his bankruptcy application to a dismissal for substantial abuse without any of his debts being discharged. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

A debtor's transfers of his property to others after the commencement of a bankruptcy can result in the dismissal of his application for bankruptcy protection without the discharge of his debts. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

## **§ 202. Powers of the receiver.**

(1) Subject to such limitations as may be ordered by the court, the powers of the receiver include, but are not limited to:

(a) the power to use, sell and lease property of the receivership estate, provided that the receiver shall not make any transfer of an interest in land that would be inconsistent with the law of the state in which the land is located;

(b) the power to obtain credit on behalf of the receivership estate;

(c) the power to assume and reject executory contracts and leases of the debtor;

(d) the power to abandon or disregard property of inconsequential value of the receivership estate;

(e) the power to transfer title to property of the estate pursuant to distribution orders from the court under section 204 of this subtitle; and

(f) the power to avoid preferences and fraudulent conveyances as provided in sections 205, 206 and 207 of this subtitle.

(2) Court approval is required for actions taken pursuant to subsection (1)(a) and (1)(b) of this section unless the activity occurs in the ordinary course of business. Court approval is also required for actions taken pursuant to subsection (1)(c), (1)(d), (1)(e) and 1(f) of this section.

**Source:** PL 13-73 § 17.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

**Case annotations:** Bankruptcy Rule 2008 refers only to blanket bonds in Rule 2010 which may be authorized when a trustee or receiver is qualified in a number of cases. A bond will not be required when the receiver has been qualified in only one case, and when the bond requirement is discretionary, especially in this early stage of development of bankruptcy law and the small number of persons who might be able to qualify as a bankruptcy receiver or trustee and the lack of insurance companies that could issue a bond. *In re Panuelo*, 15 FSM

R. 640, 642 (Pon. 2008).

A receiver can move to compel the attendance of persons at a creditors' meeting because interested parties can make such motions, and the receiver stands in the debtor's shoes and the debtor is included in the definition of an "interested party." *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

When a debtor has failed to file supplemental schedules with corrected information about his property as required, the receiver should be permitted to do it based on the information she has uncovered and any further information she may develop. *In re Panuelo*, 16 FSM R. 339, 345 (Pon. 2009).

### **§ 203. Property to be administered by the receiver.**

(1) The appointment of a receiver pursuant to this chapter creates a receivership estate. The estate shall consist of the following:

(a) subject to the exemptions contained in section 209 of this subtitle, all property owned by the debtor on the date of the application;

(b) all property acquired by the debtor through bequest, devise, or inheritance, or as beneficiary of a life-insurance policy in the 180 days after such application; and

(c) all property acquired by the receivership estate after the date of application.

(2) The receivership estate shall be administered in accordance with this subtitle and as may be ordered by the court.

**Source:** PL 13-73 § 18.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

**Case annotations:** Since the FSM Code provisions are construed according to the fair construction of their terms with a view to effect its object and to promote justice, to construe the phrase "all property," to include the debtor's property outside the FSM would construe the Bankruptcy Act and 31 F.S.M.C. 203(1)(a) according to the fair construction of their terms or with a view to effect the Bankruptcy Act's object and to promote justice. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

A debtor's receivership estate consists of all property owned by the debtor on the date of the application, all property acquired by the debtor through bequest, devise, or inheritance, or as beneficiary of a life-insurance policy in the 180 days after the bankruptcy application, and all property acquired by the receivership estate after the date of application. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

Income earned by a debtor after his bankruptcy application is not part of the receivership estate, but property that was owned by the debtor when he applied for bankruptcy protection is part of the receivership as must be the return (or unearned income) generated by that property. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

Proceeds of property of the receivership estate generated (or acquired) by receivership estate property after the debtor's application, goes to and is part of the receivership estate. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

A transfer of property out of the debtor's estate, especially to insiders, without the return to the estate of reasonably equivalent or fair

market value, is a fraudulent transfer or a transfer with intent to defraud. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

#### **§ 204. Distribution of the receivership estate.**

Assets of the receivership estate, following the satisfaction of secured claims pursuant to section 107 of this subtitle, shall be distributed according to the priorities set forth in section 108 of this subtitle. Such distribution shall occur by order of the court, upon application by the receiver. The order shall identify the assets to be distributed and include a schedule of the distributions to be made.

**Source:** PL 13-73 § 19.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

#### **§ 205. Preferences.**

(1) Except as provided in subsection (2) of this section, the receiver may avoid any transfer of an interest of the debtor in property:

- (a) to or for the benefit of a creditor;
- (b) for or on account of an antecedent debt;
- (c) made while the debtor was insolvent;
- (d) made on or within 90 days, or within one year if the creditor was an insider, affiliate or relative of the debtor, before the date of the application for the receivership; and
- (e) that enables such creditor to receive:
  - (i) more than such creditor would have received if the transfer had not been made;
  - (ii) more than such creditor would have received if his claim, right or entitlement had been treated as a claim in a proceeding under chapter 2 of this subtitle.

(2) The receiver may not avoid under subsection (1) of this section a transfer to the extent that:

- (a) such transfer was intended to be, and in fact was, a contemporaneous exchange for new value;
- (b) such transfer was a payment of debt in the ordinary course of business of both the debtor and the transferee; or
- (c) after such transfer, such creditor advanced new value to or for the benefit of the debtor.

(3) The receiver has the burden of proving the avoidability of a transfer under subsection (2) of this section. The receiver is entitled to the benefit of a rebuttable presumption that the debtor was insolvent during the 90 day period specified in subsection (1)(d) of this section.

**Source:** PL 13-73 § 20.

**Case annotation:** The receiver is statutorily empowered to avoid preferences paid to creditors made on or within 90 days, or within one year if the creditor was an insider, before the bankruptcy application, and to avoid fraudulent transfers made within one year before the application for receivership, and to recover the transferred property for the estate's benefit. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

### **§ 206. Fraudulent transfers.**

(1) The receiver may avoid any obligation incurred by the debtor or transfer of an interest of the debtor in property if such transfer is made or obligation incurred within one year before the application for the receivership; and

(a) the debtor actually intended to hinder, delay or defraud a creditor or creditors, or

(b) the debtor has entered into a transaction or incurred an obligation, without receiving a reasonably equivalent value for the obligation or transfer and,

(i) at the time of entering into the transaction to transfer the property or to incur the obligation, the debtor was not generally paying his debts when they became due or should reasonably have believed that, following the consummation of the transaction, he would not be able to pay his debts when they became due; or

(ii) the debtor was engaged in a business for which, following the transaction, the remaining assets of the business were unreasonably small in relation to the business.

(2) Except to the extent that the transfer is also voidable pursuant to section 205 of this chapter, a good faith transferee for value is entitled to a lien on the transferred property to the extent of such value.

**Source:** PL 13-73 § 21.

**Case annotation:** It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

### **§ 207. Transferee liability.**

(1) To the extent that a transfer is avoided under either section 205 or 206 of this subtitle, the receiver is entitled to recover the property transferred or, in appropriate cases, its value from:

(a) the initial transferee or the entity for whose benefit such transfer was made; or

(b) subsequent transferees of the initial transferees.

(2) The receiver may not recover under subsection (1) of this section from a good faith transferee for value or a subsequent transferee of such a good faith transferee.

(3) The receiver is entitled to only a single satisfaction under section 206(1) of this subtitle.

**Source:** PL 13-73 § 22.

**§ 208. Discharge.**

- (1) A debtor who is the subject of receivership proceedings is entitled to a discharge from the claims of all creditors, unless:
- (a) the debtor is not an individual; or
  - (b) the debtor has:
    - (i) transferred property in violation of section 206 of this subtitle; or
    - (ii) with intent to defraud has concealed, transferred or damaged property of the receivership estate after the date of the application; or
  - (c) the debtor has been granted a discharge pursuant to this chapter in a receivership commenced within seven years before the commencement of the pending receivership.
- (2) A discharge granted pursuant to this chapter does not discharge the debtor from any debt:
- (a) for money, property and the like obtained by actual fraud;
  - (b) to a spouse, former spouse, child or other person for support or maintenance;
  - (c) to the extent that such debt is subject to disallowance pursuant to section 107(2) of this subtitle; or
  - (d) to the extent such debt arises from a student or educational loan that, at any time since the debt was first incurred, has been funded, administered or guaranteed by any government or government agency.
- (3) A discharge may be revoked for cause at any time prior to the termination of the receivership proceeding.
- (4) A discharge operates as an injunction against the commencement or continuation of any act or action to collect a debt as a personal liability of the debtor.

**Source:** PL 13-73 § 23.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

**§ 209. Exempt property.**

An individual debtor may exempt from the receivership estate, except for property subject to allowed secured claims, the property described in either subsection (1) or subsection (2) of this section:

- (1) The debtor may exempt from the receivership estate any property that is exempt under the law, in effect at the time of the filing of the application, of the State in which the debtor was domiciled for the 180 days immediately preceding the filing of the application, or for the largest portion of said 180-day period.
- (2) Alternatively, the debtor may exempt from the receivership estate, the following property, except to the extent that such exemption is expressly not permitted under the law of the State applicable to debtor under subsection (1) of this section:

(a) *Personal and household goods.* All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding and provisions for household use sufficient for six months.

(b) *Necessities for trade or occupation.* All tools, implements, utensils, two work animals and equipment necessary to enable debtor to carry on his usual occupation. This section does not apply to corporate filings, or individual filings where the debt is primarily of a business nature.

(c) *Land and interests in land.* All interests in land, including crops on such land, however, any interest owned solely by a debtor, in his own right, may be ordered sold, transferred or subdivided by the receiver if the court making the order finds that

(i) justice so requires,

(ii) the transfer, sale or subdivision of the interest would not be inconsistent with the law relating to exemptions of the State in which the land is located, and

(iii) after the sale or transfer, the debtor will have sufficient land and crops remaining to support himself and those persons directly dependent on him according to recognized local custom.

In order to accomplish the purposes of this subtitle, the court, after notice to all interested parties in such manner as may be ordered by the court, may enter rulings as to the nature and extent of the debtor's interests in land, which rulings shall be binding upon and enforceable against any person, who claims or may later claim an interest in that land.

(d) *Vehicles.* A motor vehicle, not to exceed \$1,500 in value.

(e) *Boats.* A boat and motor with a combined value not in excess of \$2,500.

(f) *Cash.* Cash on hand in any checking or savings account not to exceed \$400.

(g) *Retirement.* Debtors interest in a retirement plan, except to the extent that the retirement plan has been funded by contributions from the debtor and the debtor has the ability to exercise control or benefit from the plan before retirement.

(h) *Others.* Other personal or household goods, not previously exempted, not to exceed \$1,200 in the aggregate or \$200 per item.

**Source:** PL 13-73 § 24.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

**Case annotations:** The debtor's estate that is subject to a bankruptcy receivership consists of, subject to the exemptions contained in section 209 of the Bankruptcy Act, all property owned by the debtor on the date of the application. *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).

Whether property is exempt from bankruptcy creditors is an issue that should be brought up after the appointment of a Receiver. A claim that the property is exempt is not an excuse for failing to list it in the official forms since a debtor must list property claimed as exempt under on the schedule of assets required to be filed by Bankruptcy Rule 1007. This allows creditors to object to the debtor's claim of exemption. *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).

When the Bankruptcy Act states the debtor's estate consists of "all property owned by the debtor on the date of the application," the Act should not be interpreted to mean something other than what it says. "All" means "all." Since statutes are to be interpreted according to their plain meaning, and when a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. The meaning of "all" is plain and unambiguous." *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).

Since the Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, it would be inherently unfair to the creditors' interests if only a debtor's property that happened to be in the FSM when the bankruptcy application was filed were included in the debtor's estate (and the debtor's property elsewhere not included). *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).