

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 87986**

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**MARC W. COLLINS**

PLAINTIFF-APPELLEE

vs.

**TERRY S. COLLINS, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas

Case No. CV-578719

**BEFORE:** Rocco, J., Calabrese, P.J., Dyke, J.

**RELEASED:** January 25, 2007

**JOURNALIZED:**

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KENNETH A. ROCCO,, J.:

{¶1} Defendants-appellants, Terry S. Collins, Heli Vires-Collins, Gold Touch, Inc. and the Ohensalo Trust appeal from a trial court order appointing Mark E. Dottore as receiver of the assets of Gold Touch, Inc. They argue that the court abused its discretion by appointing a receiver in this case, because (a)

R.C. 2735.01 did not authorize the appointment of a receiver, (b) the court failed to conduct an evidentiary hearing, and (c) the court failed to provide findings of fact and conclusions of law, as requested.

### Procedural History

{¶2} The complaint in this case was filed on December 2, 2005. It alleges that plaintiff-appellee Marc Collins and defendant-appellant Terry Collins are each 50% shareholders of Gold Touch, Inc., a Florida corporation. Marc Collins is the president and chief executive officer of the corporation; Terry Collins is vice president and manages day-to-day operations. In the complaint, Marc Collins alleges that Terry Collins has engaged in “false and fraudulent” financial transactions to take money and property belonging to Gold Touch and to deprive Marc Collins of income and dividends and conceal his actions from Marc Collins. Marc Collins claims that Terry Collins breached his fiduciary duty as a fellow shareholder in a closely-held corporation by using corporate assets for his own personal gain and failing to account for corporate assets. He further claims Terry Collins converted corporate assets to his personal use and interfered with Marc Collins’ “actual and prospective business relationships.” Marc Collins requests an accounting from Terry Collins as well as his wife, co-defendant Heli Collins.<sup>1</sup>

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<sup>1</sup>Gold Touch, Inc. and Ohensalo Trust were named as defendants, but it does not appear that any claims were asserted against them.

{¶3} Each defendant answered. Terry Collins also asserted a shareholder's derivative claim against Marc Collins as well as a third-party claim against Gold Touch of Florida, Inc. These claims contended that Marc Collins usurped corporate assets of Gold Touch, Inc. to compete with it through Gold Touch of Florida. Terry Collins further asserts that Marc Collins has defamed him and intentionally inflicted serious emotional distress.

{¶4} On January 30, 2006, Marc Collins filed an emergency motion to appoint a receiver for the property and assets of Gold Touch, Inc. No evidence was included with the motion. Defendants filed a brief in opposition to this motion under seal, attaching an extensive 28 page affidavit from Terry Collins with some 44 exhibits, as well as the affidavit of Demitrios Roumanis. Marc Collins included his own affidavit with his reply.

{¶5} On March 6, 2006, the court entered its opinion and order granting the motion to appoint a receiver. In the opinion, the court noted that both Marc and Terry Collins have an interest in the property and assets of Gold Touch, Inc. and each contends the other has converted assets of Gold Touch to his own use and benefit. The court concluded that "since the property and assets of Gold Touch, Inc. are in danger of being lost, removed or materially injured, this Court finds that the appointment of a Receiver is appropriate under O.R.C. 2735.01(A) and (E)." The court alternatively concluded that appointment of a receiver was appropriate under R.C. 2735.01(F) "[i]n order to insure [sic] that neither Plaintiff

[n]or Defendant Terry Collins, the owners of Gold Touch, Inc., exercise sole and exclusive control over the operations and management of Gold Touch, Inc.”

{¶6} Defendants immediately filed a request for findings of fact and conclusions of law. The court denied this request.

### Law and Analysis

{¶7} Initially, we note that although the order appointing the receiver did not determine the merits of either party’s claims, courts have historically held that the appointment of a receiver is an order affecting a substantial right in a special proceeding, and hence a final appealable order. See, e.g., *Forest City Invest. Co. v. Haas* (1924), 110 Ohio St. 188. The Ohio Supreme Court has further suggested that appointment of a receiver is ancillary to the underlying proceedings, and thus may be considered a provisional remedy the grant or denial of which is appealable under R.C., 2505.02(A)(4). *Community First Bank & Trust v. Dafoe*, 108 Ohio St.3d 472, 2006-Ohio-1503, ¶¶25 and 26. Under either analysis, we have jurisdiction to review the trial court’s order here.

{¶8} Appointment of a receiver is governed by R.C. 2735.01, which provides in pertinent part:

**“A receiver may be appointed by \* \* \* the court of common pleas or a judge thereof in his county \* \* \* in the following cases:**

**“(A) In an action \* \* \* between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of a party whose right to or interest in the property or**

**fund, or the proceeds thereof, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;**

**“\* \* \***

**“(E) When a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;**

**“(F) In all other cases in which receivers have been appointed by the usages of equity.”**

**{¶9}** The decision whether to appoint a receiver is vested in the sound discretion of the trial court. *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 73. “[An] order for an interim receiver may be reviewed only for the purposes of determining whether there is evidence tending to prove the facts essential to sustain the order, and a reviewing court may not consider the weight of the evidence. Such order may be reversed only when there is failure of proof which would be essential to support the order, and the order may not, in any event, be reversed upon the weight of the evidence.” *Malloy v. Malloy Color Lab., Inc.* (1989), 63 Ohio App.3d 434, 436, citing *Wilgus v. Arthur* (1943), 72 Ohio App. 511; also see *Parker v. Elsass*, Franklin App. Nos. 01AP-1306, 02AP-15 and 02AP-144, 2002-Ohio-3340, ¶48.

**{¶10}** In the exercise of its sound discretion, the common pleas court properly determined that the equal shareholders’ allegations of conversion and misuse of corporate assets against one another created a deadlock which made normal operation of the corporation during the pendency of these proceedings

impractical, if not impossible. As a matter of general equity, a receiver is necessary to protect the corporation's business and assets while these allegations are sorted out, regardless of the actual merits of either party's claims. Cf. *Malloy v. Malloy Color Lab., Inc.* (1989), 63 Ohio App.3d 434. The allegations of the pleadings and the parties' arguments support this conclusion; no factual findings were necessary. Therefore, we find the court did not abuse its discretion by appointing a receiver for the assets and property of Gold Touch, Inc., and did not err by failing to conduct an evidentiary hearing or to enter findings of fact and conclusions of law.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, JUDGE

ANTHONY O. CALABRESE, JR., P.J. and  
ANN DYKE, J., CONCUR