

Battles v. Bywater, LLC, 2014 NCBC Order 5.

STATE OF NORTH CAROLINA  
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
14 CVS 1853

CHAD A. BATTLES,

Plaintiff,

v.

BYWATER, LLC, a North Carolina  
Limited Liability Company, and  
AGIQUA, LLC, a North Carolina Limited  
Liability Company,

Defendants.

**ORDER APPOINTING RECEIVER**

**THIS MATTER** is before the Court pursuant to its October 31, 2014 Order and Opinion requiring the parties to submit a list of potential receivers to manage the affairs of Defendants Bywater, LLC (the “Bywater”) and Agiqua, LLC (“Agiqua”) (collectively the “Companies”). *Battles v. Bywater, LLC*, 2014 NCBC 51 (N.C. Super. Ct. Oct. 31, 2014), [http://www.ncbusinesscourt.net/opinions/2014\\_NCBC\\_52.pdf](http://www.ncbusinesscourt.net/opinions/2014_NCBC_52.pdf) (granting Plaintiff’s Motion to Disqualify; striking all filings submitted by Defendants’ counsel; granting Plaintiff’s Motion to Appoint Receiver; and denying Plaintiff’s Motion for Preliminary Injunction). Upon considering the parties’ submissions, and having previously determined that the appointment of a receiver is appropriate in present case, the Court hereby **ORDERS** as follows:

1. Effective upon entry of this Order, Roberts & Stevens, P.A. is appointed as receiver of the Bywater and Agiqua (the “Receiver”). Messrs. Marc Rudow and John Noor are specifically authorized, jointly and severally, to act on the Receiver’s behalf.

2. The Receiver shall take charge of, operate, preserve, maintain, and care for the Companies’ property until discharged by this Court.

3. Upon entry of this Order, the Receiver shall have access to the Companies for purposes of transitioning the management of the Companies to the Receiver. The Companies' employees, agents, principals, and affiliates shall reasonably assist with the transition of the Companies' management.

4. The Receiver shall have the following additional powers and authority:

- a. The Receiver shall be entitled to immediate exclusive possession, custody, and control of the Bywater and its assets, and shall be entitled to immediate exclusive possession, custody, and control of all books and records concerning the operation, management, and maintenance of the Company.
- b. The Receiver will have the authority, should it so choose, to deposit all funds received by the Companies into separate bank accounts in a federally-insured bank of the Receivers' choice. These accounts may be interest-bearing accounts and the Receiver must retain any and all interest which is earned for the benefit of the Companies.
- c. The Receiver is authorized to retain counsel to: defend Defendants in this action and pursue any claims on behalf of the Companies necessary to protect the Companies' best interests. Should the engagement of an attorney be necessary, the Receiver is authorized to engage itself as counsel.
- d. The Receiver shall take all reasonably required action to comply with the terms of those now-existing reasonable, ordinary, and necessary contracts relating to the operation and maintenance of the Companies, including paying for the costs incurred pursuant to such contracts.

- e. The Receiver will have the authority to contract and pay for routine and ordinary items of maintenance, repair, and operation pertaining to the Companies' ordinary course of business.
- f. The Receiver shall have the authority to contract and pay for emergency repairs, including such repairs that are capital in nature or that may be mandated pursuant to the order of any government regulatory authority.
- g. The Receiver shall contract and pay for hazard, fire, and liability insurance for the Companies in the event the Companies are not adequately insured.
- h. The Receiver shall pay all property and other taxes already or hereafter incurred on the Companies.
- i. The Receiver may pay all other expenses required in order to preserve and operate the Companies during the pendency of this action.
- j. The Receiver may make other disbursements of the funds incoming to the Companies from time-to-time as ordered by the Court.
- k. The Receiver, in its discretion, may employ or terminate such agents, employees, accountants, and attorneys as, in its judgment, are advisable or necessary for the management, operation, and maintenance of the Companies. Additionally, the Receiver is authorized to provide reasonable compensation to any retained agents, employees, accountants, and attorneys without Court authorization.
- l. The Receiver may, in its discretion, institute, prosecute, defend, compromise, adjust, intervene in, or become party to any action or proceeding in state or federal court as is necessary for the protection, maintenance, or preservation

of the Companies' interests, and likewise to defend, compromise, adjust, or otherwise dispose of any and all actions or proceedings instituted against the Companies.

- m. The Receiver may provide a copy of this Order to anyone who may be affected by its terms and provisions.
- n. Notwithstanding any of the forgoing, the Receiver shall only be obligated to pay the fees and expenses identified in this Order, to the extent that funds are available from the Companies' revenues.
- o. To the extent funds are available, the Receiver may pay obligations and liabilities incurred prior to entry of this Order to the extent the Receiver deems such payments necessary or useful for the ongoing business of the Companies.
- p. Pursuant to N.C. Gen. Stat. § 57D-6-04(d), the Receiver and counsel shall receive compensation at an hourly rate of \$250.00 for Mr. Rudow, \$200.00 for Mr. Noor, and \$90.00 for administrative assistants, plus reimbursement of all reasonable and necessary out-of-pocket expenses. The Receiver's and counsel's compensation shall be expenses of the receivership and billed on a monthly basis. The Receiver shall provide the Court with copies of its monthly bills so that compensation can be authorized by order of the Court. If the revenues received by the Companies are insufficient to pay the compensation of the Receiver and counsel, the Receiver is authorized to mandate a capital contribution be made by all members of the Companies. The Receiver shall provide prompt notice to the Court of any capital contributions mandated under this Order.

- q. The Receiver shall have the same authority as the Companies and their Members to step into the shoes of all applicants and permittees for all permits pending or issued to the Companies or their agents, employees, or members for the operation of the Companies, including, but not limited to, all alcoholic beverage permits.

5. Upon entry of this Order, the Companies and their agents, contractors, employees, and representatives shall:

- a. Surrender and deliver to the Receiver all active files pertaining to trade vendors or other persons or entities supplying services to the Companies.
- b. Cease incurring any expenses pertaining to the Companies without the Receiver, or its designee's, prior approval.
- c. Cooperate with the Receiver in the performance of its duties and responsibilities.

6. The Receiver's duties and responsibilities provided by this Order shall become effective upon entry of this Order and shall cease upon entry of an order terminating this receivership.

7. All proceedings in this action shall be stayed for thirty (30) days to allow the receiver to: transition management; secure the Companies' assets; assess the viability of any claims held by the Companies; and perform all other necessary actions.

8. The Receiver and any party to this action, upon proper notice to the parties in compliance with the Rules of Practice and Procedure for the North Carolina Business Court, may apply to this Court for further instructions and for further powers to enable the Receiver to properly fulfill the Receiver's duties hereunder.

9. The parties, as well as their agents, servants, and employees, and any persons receiving notice of this Order, shall not dispose of, transfer, assign, or in any way convey any of the Companies property unless they have the obtained the prior express approval of the Receiver.

10. Upon entry of this Order, the parties, as well as their agents, servants, and employees, shall refrain from making any public comments on behalf of the Companies concerning the status of this case or the receivership without the prior approval of the Receiver.

11. Pursuant to N.C. Gen. Stat. § 1-502.1, this Order is conditioned on, and shall take effect after, the posting of a bond by Plaintiff in the amount \$500.00 and payable to Defendants.

12. Without limiting any other rights or immunities the Receiver may have at law or in equity, the Receiver shall have no liability for acts or omissions made by or on its behalf in its capacity as Receiver, so long as such acts and omissions are made in good faith, without gross negligence, and in a manner that the Receiver reasonably believes is in the best interests of the Companies. All who act or have acted on behalf of the Receiver are protected and privileged with the same protections of the Receiver. Any debts, liabilities, or obligations incurred by the Receiver in the course of this receivership, including the operation or management of the Companies, whether in the name of the Receiver, the Companies, or the Receivership estate, shall be the debt, liability, and obligation of the Receivership estate only and not of the Receiver or any employee or agent.

13. In accordance with N.C. Gen. Stat. § 1-501, the Court shall retain jurisdiction and supervision of all matters concerning the Receiver and the receivership.

**SO ORDERED**, this the 11th day of December, 2014.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Special Superior Court Judge  
for Complex Business Cases