

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. Alan Walker, in his capacity as :
Secretary for the Department of :
Community and Economic :
Development, :
Petitioner :
v. : No. 569 M.D. 2011
City of Harrisburg, :
Respondent :

ORDER

AND NOW, this 15th day of November, 2013, upon consideration of the Application by William B. Lynch, the Receiver for the City of Harrisburg (“Receiver”), to recognize the Receiver’s power and authority to sign contracts, agreements and documents approved by City Council and executed by the Mayor in furtherance of the implementation of the Harrisburg Recovery Plan (“Strong Plan” or “Plan”) and in view of the necessity for expedited consideration of the Receiver’s request in order to facilitate consummation of the Plan, which is dependent on prompt execution of necessary contracts, the Court finds and concludes:

1. Pursuant to the Order of September 23, 2013, approving and confirming the Plan (“Plan Approval Order”), the Receiver and/or the City of Harrisburg (“City”), including all elected and appointed officials, as applicable, are “authorized and required to take action necessary to effectuate” the various key components of the Plan, “including, without limitation and as applicable, finalizing and executing any relevant

agreements, resolutions, ordinances and any other necessary documentation;" Plan Approval Order at 7-8, ¶¶ C-F.

2. Pursuant to Section 706(a)(6) of the Municipalities Financial Recovery Act of July 10, 1987, P.L. 246 (Act), *as amended* by the addition of Chapters 6 and 7 by the Act of October 20, 2011, P.L. 318, 53 P.S. § 11701.706(a)(6), the Receiver is authorized and empowered to, "approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements" with the City;

3. Pursuant to Section 704(a)(2) of the Act, the confirmation of the Plan "has the effect of ... suspending the authority of the elected and appointed officials of the distressed city or an authority to exercise power on behalf of the distressed city or authority ... to the extent that the power would interfere with the powers granted to the receiver or the goals of the recovery plan;"

4. Pursuant to Section 413(c) of the Optional Third Class City Charter Law, Act of July 15, 1957, *as amended*, 53 P.S. § 41413(c), the execution of contracts approved by City Council and signed by the Mayor is a purely ministerial duty, *see Capital City Lodge No. 12, Fraternal Order of Police v. Labor Relations Bd.*, 30 A.2d 1241, 1244 (Pa. Cmwlth. 2011);

5. In furtherance of the implementation of the Plan, the Receiver is authorized to perform this ministerial duty on behalf of the City and any Authority of the City to the extent such contracts are contemplated by and consistent with the terms of the Plan; and,

6. Delays by the City Controller in executing documents necessary to the effectuation of the Plan have occurred and any further such

delays could threaten the timely consummation and jeopardize the ultimate success of the Plan.

Based on these findings and conclusions, the Application is hereby **GRANTED**.

Further, the Court ORDERS:

1. Plan related contracts, agreements and documents that have been approved by City Council, executed by the Mayor and submitted to the City Controller for execution may be signed by the Receiver and the Receiver's signature thereon shall have the same force and effect as that of the Controller;

2. Certain contracts and agreements approved by City Council and signed by the Mayor have been submitted to the City Controller for execution. In view of the necessity that these documents be promptly executed in order to implement the Plan and that timely implementation is critical to the success of the Plan and the economic viability of the City, if the Controller fails to execute these contracts or agreements within 48 hours of the date of this Order, the Receiver shall sign such contracts, agreements or documents on behalf of the City;

3. In the event that additional Plan related contracts, agreements or documents as approved by City Council and signed by the Mayor are submitted to the City Controller, but remain unsigned by the Controller two business days after delivery to the Controller for his signature, the Receiver shall sign such contracts, agreements or documents on behalf of the City.

In the event the Receiver exercises his signature authority as recognized by this Order, the Receiver shall notify the court of such action either by separate filing or as part of a status update and may submit any such document to the court for confirmation of the efficacy of the Receiver's signature on such document.



BONNIE BRIGANCE LEADBETTER,
Judge

Certified from the Record

NOV 18 2013

And Order Exit