

IN THE CIRCUIT COURT OF THE  
18TH JUDICIAL CIRCUIT IN AND  
FOR SEMINOLE COUNTY FLORIDA

ROY NEIL WILLIAMS,

Plaintiff,

vs.

Case No. 2018-CA-003326-16C-K

K & W EXCAVATING, LLC,  
a Florida limited liability Companies,

Defendant.

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ROY NEIL WILLIAMS,

Plaintiff,

vs.

Case No. 2019-CA-000657-16C-G

K & W INVESTMENT VENTURES, LLC,

Defendant.

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**AGREED ORDER APPOINTING RECEIVER AND  
DIRECTING THE WIND DOWN OF THE COMPANIES**

THIS MATTER came before the Court in these cases which were consolidated by Order dated March 13, 2019 with the request of all parties for the appointment of Robert B. Morrison as Receiver to wind down the affairs of K & W EXCAVATING, LLC and K & W INVESTMENT VENTURES, LLC (the "Companies"). After due consideration,

It is hereby ORDERED and ADJUDGED as follows:

1. The Court has the power to appoint a Receiver pursuant to § 605.0704(1), Florida Statutes, to wind up and liquidate the affairs of the limited liability Companies.
2. The Court by separate orders has entered orders dissolving K & W Excavating, LLC and K & W Investment Ventures, LLC (the "Companies") effective April 1, 2019.
3. Robert B. Morrison is hereby appointed as a Receiver to wind up the affairs of the Companies.

4. The Companies shall cease all business operations on or before April 30, 2019, with the date to be determined by the Receiver after considering what date is appropriate to allow the Companies to complete current work and commitments and to give notice to its Members, employees, vendors and customers of the dissolution of the Companies. This notice period allows the Companies time to complete obligations and avoid incurring potential liabilities that may be avoided with this time notice. Kinser shall manage and operate the Companies in accordance with its standard business operating procedures until April 1, 2019 subject to the review and direction of the Receiver who shall begin preparations for the wind down of all affairs of the Companies when the Companies formally dissolve on April 1, 2019. After April 1, 2019, the Receiver may, but is not obligated to, employ either Member (Kinser or Williams) to preform assigned tasks at compensation as agreed between the Member and the Receiver to aid in the wind down of the Companies

5. The Receiver shall take control of all business assets and bank accounts and shall wind down the affairs of the Companies in accordance with this Order.

6. The Companies do not have a written operating agreement. In the Redemption Agreement of K & W Excavating, LLC, Roy Williams and Cary Kinser agreed in § 4.4 that upon dissolution of the Companies that the Companies' affairs shall be wound up with a distribution to the Members after the dissolution of the Companies and after the payment of liabilities or appropriate reserves for contingent liabilities. Section 4.4 specifically authorizes that the Members may agree to accept distributions in kind of non-cash Companies assets and that if they do not agree to accept that, that the non-cash assets of the Companies shall be converted to cash. It was agreed that the Companies' assets, after payment of all liabilities of the Companies and establishment of reserves for contingent liabilities, be distributed to the Members prorate in proportion to their respective percentage interest. The Members, Kinser and Williams, each own 50% of the Companies. The Receiver shall follow § 4.4 of the Redemption Agreement in winding down the Companies.

7. The Receiver shall have all powers as designated in § 605.0704, Florida Statutes.

8. The parties shall deliver all assets to the Receiver, including all hard assets, all books of accounts, financial and banking records, computer data form and all computer data to be received, compiled, prepared or maintained by the Receiver.

9. The Receiver shall take possession and control of all assets of the Companies, including any and all real and personal properties, whether tangible or intangible, and shall handle the property in a reasonable, prudent, diligent and official manner. All property in the custody of the Receiver shall be subject to this Order. The Receiver shall have the authority to transfer title to the assets in order to raise cash for the Companies and shall have the authority to deliver title to the assets to either Member so long as the Member receives credit for the distribution of the assets.

10. The Receiver shall convert the non-cash assets of the Companies into cash by selling them at fair market value unless a Member agrees to accept a non-cash asset as a credit valued at its fair market value against the distribution due to that Member pursuant to § 4.4 of the Redemption Agreement. The Receiver shall offer each Member the opportunity to accept in-kind non-cash assets at the fair value as determined by the Manager which shall be the amount of net-cash which the Receiver would expect to receive if the Receiver sold the asset (i.e. after deduction of selling costs, if any). If both Members desire an asset, at the fair value set by the Receiver, then they shall both bid for the asset, and the Receiver shall distribute the asset to the Member with the highest bid. The Receiver shall conduct the bidding process orally in a telephone conference with the Members or their counsel set for the purpose of the bidding process. Upon the Companies ceasing to do business on or before April 30, 2019, each Member may open a business in the field of excavating pools so that the Member may be motivated to bid for and accept a non-cash asset from the Companies.

11. The Receiver shall pay all liabilities of the Companies. If the Receiver deems it prudent or necessary, pursuant to the Receiver's discretion, the Receiver may utilize the process in § 605.0711. However, the Receiver is not required to utilize this process.

12. The Receiver shall set aside funds as the Receiver deems appropriate for the payment of any contingent liability of the Companies and set the time period for the distribution of such funds to the Members equally if no claim is made based on each contingent liability.

13. Kinser and Williams are equal owners of the Companies and are entitled to equal distributions of all proceeds after payment of all debts. If either Kinser or Williams contends that the other Member owes the Companies any funds and/or that Kinser or Williams are entitled to be reimbursed or paid any monies from the Companies, including any attorneys' fees or costs incurred in this dissolution, then they shall serve a written proof of claim to the Receiver. The claim shall be served upon the Receiver on or before April 10, 2019, setting forth the amount of the claim and all proof in support of the claim with a copy emailed or hand delivered to the other Member's counsel. On or before April 19, 2019, the other Member shall file a written response with the Receiver with proof which admits or denies the claim with a copy emailed or hand delivered to the other Member's counsel. The Receiver shall thereafter investigate the claim as the Receiver deems appropriate and promptly make a final binding determination of the validity and amount of the claim. If the claim is determined valid, then the Receiver shall take into account the value of the claim in making the distribution to Members.

14. After payment of all liabilities, reserves have been established for any contingent liability, the Receiver fees and expenses have been paid, any claims made by the parties have been resolved by the Receiver (taking into account distributions in kind of assets distributed to Members), the Receiver shall make a reconciliation of the amounts due to each Member and distribute the remaining cash so that each Member receives 50% of the distribution of the Companies assets.

15. The Receiver shall pay himself on a monthly basis his fees determined at the hourly rates as set forth in the proposal for request for receivers and the Receiver's expenses that were submitted to this Court. The Receiver shall give each party ten (10) days' written notice of his fee and

expense request. Unless a party formally objects in writing, then the Receiver's fee shall be paid in the stated amount. If any party objects, the Court shall decide the issue of the amount due to the Receiver.

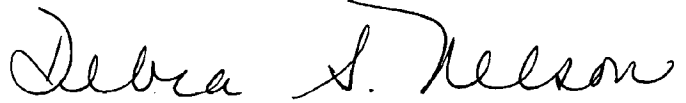
16. The appointment of a Receiver shall become effective immediately upon the Receiver filing with the Clerk of this Court, no later than ten (10) days hereafter, his oath and acceptance to the effect that the Receiver accepts the appointment of receiver and will faithfully perform his duties directed under this Order of Court and any subsequent directives by this Court pursuant to applicable law. Receiver shall file a bond with a surety qualified to do business in the State of Florida, in a form consistent with Form 1.960, Florida Rules of Civil Procedure, in the sum of \$50,000.00 conditioned upon the faithful performance of his duties as Receiver with the bond premium paid by the Companies.

17. All actions taken by Receiver in connection with this receivership shall be made in the Receiver's discretion. The Members shall be entitled to be heard on issues and decisions to be made by the Receiver who shall give consideration to the views of the Members before the Receiver makes the ultimate decision.

18. As of April 20, 2019, the Receiver shall have the exclusive right and authority to collect and receive all outstanding receivables and revenue due to the Companies and shall take immediate control of all monies in any and all bank accounts in the names of K & W EXCAVATING, LLC and/or K & W INVESTMENT VENTURES, LLC. The parties shall present this Order to all banks having such accounts and direct that the banks immediately make the Receiver a party to the bank accounts with sole signatory authority over all bank accounts to be effective April 1, 2019. The Receiver shall have the exclusive right and authority to pay all business expenses as Receiver deems appropriate and lawful to be paid. The Receiver has the authority to pay all outstanding liabilities of the Companies. The Receiver shall have the authority to retain professionals to value any assets if the Receiver in his sole judgment determines that it is necessary and reasonable expense for him to have such assets valued by a third party before the Receiver complies with his duties under this Order.

19. The Receiver shall prepare and file with the Court a final report which explains how the assets have been collected and distributed.

**DONE AND ORDERED**, in Seminole County, Florida, this 28th day of March, 2019.



The Honorable Debra S. Nelson

The parties stipulate to entry of the above Order.

Attorney for Plaintiff:

Attorney for Defendant:

Attorney for CARY KINSER:

/s/ Andrew P. Lannon  
ANDREW P. LANNON, Esquire  
Fla. Bar No. 648140

/s/ Ladd H. Fassett  
LADD H. FASSETT, Esquire  
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/s/ Theodore D. Estes  
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