

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CRESTMARK,

Plaintiff,

v.

Case No. 20-11396

SIMON AUTOMOTIVE, LLC, *et al.*,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S EX PARTE MOTION TO
APPOINT RECEIVER**

Plaintiff Crestmark brings this action for breach of contract against Defendants Simon Automotive, LLC, Simonxpress Pizza, LLC, Simon Stores Corporation, SE Corporation of Michigan, Simon's Enterprise Inc., 643 Telegraph, LLC, Pinkney Petroleum, LLC, Cactus Shell, LLC, Simon Land Development Group, LLC, and Fawzi Simon. (ECF No. 1.) Plaintiff alleges that it provided two separate loans, one to Defendant Simon Automotive and one to Defendant Simonxpress Pizza, for the purchase of equipment. (*Id.*, PageID.4-5, ¶¶ 16, 19.) Defendants Simon, Simon Stores Corporation, SE Corporation of Michigan, Simon's Enterprise, 643 Telegraph, Pinkney Petroleum, Cactus Shell, and Simon Land Development Group allegedly guaranteed the loans. (*Id.*, PageID.4-5, ¶¶ 17-18, 20-21.) Plaintiff claims Defendant Simon controls Defendant companies, intermingles funds, and uses the entities "as his own personal checkbook." (*Id.*, PageID.10, ¶ 35.)

Plaintiff has filed an *ex parte* “Motion to Appoint Receiver over the Businesses of Defendants Simon Automotive, LLC and Simonxpress Pizza, LLC.” (ECF No. 3.) Plaintiff asserts “[i]t is beyond dispute that all Defendants have defaulted in their to contractual obligation to repay the [debts owed Plaintiff],” and further argues a receiver is necessary to protect and preserve assets secured by the loan agreements. (*Id.*, PageID.67, 74, 85-86.)

Plaintiff admits Defendants have not been served. (*Id.*, PageID.67.) Plaintiff does not claim service is impractical, nor does it assert it has made good faith, yet failed, attempts to complete service.

The court will deny without prejudice Plaintiff’s *ex parte* motion. After Plaintiff has completed service of Defendants, it may refile its motion. Defendants will then have an opportunity to respond. Accordingly,

IT IS ORDERED that Plaintiff’s “Ex Parte Motion to Appoint Receiver over the Businesses of Defendants Simon Automotive, LLC and Simonxpress Pizza, LLC” (ECF No. 3) is DENIED WITHOUT PREJUDICE.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 8, 2020

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 8, 2020, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522