



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00690513-00CL

DATE: July 19, 2023

REGISTRAR: Julietta Costa-Singh

NO. ON LIST: 4

TITLE OF PROCEEDING: 2046245 ONTARIO INC. et al v. 2244039 ONTARIO INC. et

al

BEFORE JUSTICE: STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|----------------------------|----------------------|
| Bota McNamara | Counsel for the Applicants | bmcnamara@kmblaw.com |
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For Defendant, Respondent, Responding Party, Defence:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------|
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For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|----------------------------|------------------------------|
| Jefferey Larry | Counsel for the Receiver | Jeff.larry@paliarerolnad.com |
| Kassidy Doherty | Solicitor for the Receiver | KDOHERTY@wildlaw.ca |
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ENDORSEMENT OF JUSTICE STEELE:

1. Motion by the Receiver heard via Zoom on July 19, 2023. The Receiver seeks the Court's approval of (i) two sale transactions involving real property of the Debtors, (ii) a temporary sealing order, (iii) the Receiver's report and activities, (iv) fees, and (v) an interim distribution to the secured creditor.
2. The relief sought is not opposed.
3. The requested relief is granted.

Sale Transactions

4. The Receiver has entered into asset purchase agreements for the sale of the Debtors' two real properties: the Cherrycrest Property and the Airport Road Property. The Receiver conducted a sales process, including a listing for each property on MLS for 46 days and a bid deadline. During the listing period there were approximately 130 NDAs signed for each property.
5. The Court of Appeal in *Royal Bank of Canada v. Soundair Corporation*, 1991 CanLII 2727 (Ont. C.A.) set out the criteria to be applied when considering the approval of a sale by a receiver:
 - a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - b. Whether the interests of all parties have been considered;
 - c. The efficacy and integrity of the process by which offers are obtained; and
 - d. Whether there has been unfairness in the workout of the process.
6. The Receiver notes the following:
 - a) The Properties were listed on MLS for 46 days;
 - b) The offers made in each APA was for greater consideration than the other offers received;
 - c) The consideration for each property was greater than the appraised amount; and
 - d) Neither APA contains a condition that would delay closing.
7. The Receiver recommends that the Court authorize the transactions. Based on the record before me, the marketing process was fair and transparent, and the consideration received is greater than the appraised value and the other offers. There is no reason to interfere with the Receiver's recommendation.
8. The sale transactions of the two properties are approved.

Temporary Sealing Order

9. The Receiver seeks an order sealing the asset purchase agreements for the two properties, the appraisals for the properties, and the details regarding the offers received on the properties (Confidential Appendices A, C and E related to the Cherrycrest Transaction, and Confidential Appendices B, D, and F related to Airport Road Transaction). The Receiver's request is that the sealing order be time limited pending the closing of the respective transaction or further order of the Court.

The information is commercially sensitive and could prejudice the sale of the properties if the contemplated transactions do not close.

10. Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.
11. The requested partial sealing order is limited in scope (only the documents noted above) and in time (until each transaction is completed or further Court Order). The proposed partial sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative effects. Importantly, the sealing order will preserve the integrity of the sale process. This greatly outweighs any negative effect that may result from temporarily restricting public access to a very limited amount of information. Further, granting the requested order is consistent with the Court's practice of granting limited partial sealing orders in conjunction with an approval and vesting order.
12. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC requirements, as modified in *Sherman Estate*.
13. The Receiver is directed to provide the sealed confidential exhibit to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential exhibit can be physically sealed.

Interim Distribution

14. The ancillary relief requested also includes an interim distribution to the secured creditor up to the amount of the indebtedness. The total proceeds of sale for the two properties exceed the outstanding indebtedness to the secured creditor.
15. The Receiver received an opinion from its counsel that the Lenders have a valid and enforceable first and second charge against the Properties.

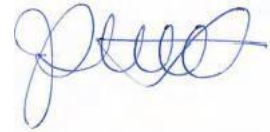
Approval of Report and Fees

16. The Receiver's activities were carried out in accordance with the authority it was granted. The Receiver appears to have acted reasonably and in the best interests of the stakeholders. This Court has the inherent jurisdiction to approve the Receiver's activities: *Bank of America Canada v. Willann Investments Ltd.*, (1993) 20 C.B.R. (3d) 223 (ONSC), at paras. 3 and 4.
17. The Receiver seeks approval of its fees and disbursements and those of its counsel detailed in the Receiver's First Report. I note that the Receiver retained Paliare Roland to act as its general counsel, and Wideboer Dellelce to act as transactional legal counsel.
18. The Court is focused on whether the fees and disbursements incurred in carrying out the receivership were fair and reasonable. The following are guidelines the Court may consider:

- a. The nature, extent and value of the assets;
- b. The complications and difficulties encountered;
- c. The degree of assistance provided by the debtor;
- d. The time spent;
- e. The receiver's knowledge, experience and skill;
- f. The diligence and thoroughness displayed;
- g. The responsibilities assumed;
- h. The results of the receiver's efforts; and
- i. The cost of comparable services when performed in a prudent and economical manner:
Bank of Nova Scotia v. Diemer, 2014 ONCA 851 (Ont. C.A.), at paras. 33 and 45.

19. Fee affidavits were filed. I am satisfied that the fees and disbursements are fair and reasonable in the circumstances.

20. Orders (the approval and vesting orders and ancillary order) to go in the forms signed by me today.

A handwritten signature in blue ink, appearing to be "J. Diemer", is located in the lower right quadrant of the page.