



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00684833-00CL DATE: 12 October 2022

NO. ON LIST: 2

TITLE OF PROCEEDING: **ROYAL BANK OF CANADA v.  
CUTLER FOREST PRODUCTS INC.**  
BEFORE JUSTICE: **MADAM JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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Harold Krawitz	Respondent	<a href="mailto:harold@cutlergroup.com">harold@cutlergroup.com</a>

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## **ENDORSEMENT OF JUSTICE KIMMEL:**

1. The Fuller Landau Group Inc. ("Fuller Landau"), in its capacity as court-appointed Receiver (the "Receiver"), appointed pursuant to an order of the Ontario Superior Court of Justice - Commercial List (the "Court") dated August 4, 2022 (the "Appointment Order") of the Property (as defined in the Appointment Order) of the Respondent, Cutler Forest Products Inc. (the "Debtor"), seeks an approval and vesting order in respect of a sale transaction contemplated by an agreement of purchase and sale between the Receiver and Infinity Assets Solutions Inc. (the "Purchaser"), for the sale of the Purchased Assets as described in the APS and owned by the Debtor (the "Sale Transaction").
2. The Receiver also seeks an ancillary order approving its activities and professional fees and sealing certain confidential appendices to its First Report pending the completion of the Sale Transaction.
3. The Receiver's First Report details the efforts undertaken to sell the Debtor's Property. The Debtor and the Royal Bank of Canada ("RBC"), the senior secured lender, support the granting of the requested orders. Certainty is the primary justification for the Sale Transaction, which will leave RBC with a substantial shortfall. However, after two rounds of bids, this Sale Transaction, for a fixed price to an auctioneer, is the deal that presents the highest and best return available to stakeholders. It provides a certain return and will pass along the risks associated with the sale process through an auction to the auctioneer; it will also eliminate certain ongoing operational costs. It is recommended by the Receiver.
4. Certain leased assets over which there is some disagreement have been carved out of the Purchased Assets and are unaffected by the orders sought today. If agreements are reached, they may be included later. The implicated lessors do not oppose the orders sought.
5. Absent evidence that a sale is improvident or that there was an abuse of process, the court will generally defer to the recommendation of the Receiver to proceed with the Sale Transaction pursuant to the APS. *Integrated Building Corp. v. Bank of Nova Scotia*, 1989 ABCA 114; *Battery Plus Inc., Re.* 112 A.C.W.S. (3d) 208 (ONSC [Comm. List]) at paras. 2- 3, 19, 22-23, 34-5 25. There is no evidence or suggestion of improvidence or that the Receiver has not acted diligently and responsibly in its efforts to secure the best transaction available in the circumstances. The Transaction is approved.
6. The Receiver has also satisfied the requirements *Royal Bank of Canada v. Soundair Corp.* (1991), 4 OR (3d) 1 (ONCA), at para. 16, for the granting of the requested vesting order.
7. The Receiver's activities for which approval is sought are supported and appear to be reasonable, having regard to what has transpired. They are approved.
8. The Confidential Appendices contains an unredacted version of the APS and the CIM. Should the transaction fail to close for any reason, the information contained within these Confidential Appendices could cause a reduction in any future sale of the Property, and harm the creditors of the Debtor if made available to the public. Protecting the information contained within the Confidential Appendices is an important interest that should be protected. There is no other reasonable alternative to sealing that will prevent Confidential Appendices from becoming public.
9. This is one of the recognized circumstances in which court openness may pose a risk to the public interest in enabling stakeholders in an insolvency to maximize the realization of a debtor's assets. The requested sealing order is appropriately limited in scope (just to the implicated Confidential Appendices containing information that might impact the public sale process) and in time (just until the sale process is completed) so as to satisfy me that it is justified and proportionate, as it must be to meet the requirements for the test for granting a sealing order as set out by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53-57, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.

10. In this context, the salutary effects of the sealing order outweigh its deleterious effects, which is this context includes the public interest in open and accessible court proceedings.
11. Approval and Vesting Order and Ancillary Order to go in the forms signed by me today with immediate effect and without the necessity of formal issuance and entry.

A handwritten signature in black ink that reads "Kimmel J." The signature is written in a cursive, flowing style.

KIMMEL J.