



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-20-00644241-00CL

DATE: JANUARY 23, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: VASTIS et al. v. KOMMATAS et al.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant:

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For Other:

Name of Person Appearing	Name of Party	Contact Info
Domenico Magisano	Counsel for the Liquidator, The Fuller Landau Group Inc. – David Filice (<i>moving party</i>)	dmagisano@lerner.ca
Mervyn Allen	Counsel for the Proposed Mississauga Road Purchaser	mallen@mintz.com

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Liquidator brings a motion seeking Court approval of sales of two properties and certain ancillary relief.
- [2] The Liquidator was appointed at the end of a trial presided over by Dietrich J. The Liquidator was tasked with the liquidation of certain properties, among other things. The motion today concerns the sale of the properties known as the Acton Road Property and the Mississauga Road Property. Both properties are now subject to fully executed agreements of purchase and sale.
- [3] No one opposed the relief sought on this motion.

Should the Court approve the sale of the Acton Road Property and Mississauga Road Property?

- [4] The Liquidator has entered into agreements for the sale of the Acton Road Property and the Mississauga Road Property.
- [5] The Liquidator submits that the principles in *Royal Bank of Canada v. Soundair Corporation*, 1991 CanLII 2727 (Ont. C.A.) are applicable. In *Re Morrison Laurier Mortgage Corporation*, 2023 ONSC 6180 (ONSC [Commercial List]), at para. 16, the Court cited the following principles which were set out by the Court of Appeal in *Re Christian Brothers of Ireland in Canada*, [2003] OJ No 4249, 2003 CanLII 18327 when assessing a court-appointed liquidator's recommendation:

First – the business decisions of court-appointed liquidators are afforded the “same deference as are the business decisions of court-appointed receivers”;

Second – “the court should place confidence in the liquidator's decision and assume it has acted properly unless the contrary is shown”; and

Third – “the court should recognize that by appointing a liquidator, it “intends to rely upon the [liquidator's] expertise and not upon its own' ... Although the court should not rubber-stamp a liquidator's decision, it should nonetheless be reluctant to second-guess it.”

- [6] While both *Morrison Laurier Mortgage* and *Christian Brothers of Ireland* relate to liquidators appointed under the *Winding Up and Restructuring Act*, I agree with the Liquidator's submission that it is appropriate to extend the same principles to court appointed liquidators under the *Business Corporations Act* (Ontario).
- [7] The Court in *Morrison Laurier Mortgage*, at para. 17, applied the *Soundair* factors to determine whether to approve a proposed transaction. I am satisfied that those principles ought to be applied in this case.
- [8] The Court of Appeal in *Royal Bank of Canada v. Soundair Corporation*, 1991 CanLII 2727 (Ont. C.A.) set out the criteria the court generally applies when considering the approval of a sale:

- 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.

[9] The Liquidator notes the following:

- a. Both properties were marketed through an extensive process by reputable realtors under the supervision of the Liquidator;
- b. The proposed purchasers on each property submitted unconditional offers that the Liquidator deemed to be the highest and best offers submitted;
- c. The Liquidator is satisfied with the purchase price for both properties based on exposure to the market and the appraised value of each property; and
- d. The Liquidator has engaged and consulted with both of the shareholders throughout the marketing and sale process.

[10] The Liquidator recommends that the Court authorize the transactions. Based on the record before me, the marketing process was fair and transparent. There were multiple bids received in respect of the Mississauga Road property and two bids received in respect of the Acton Road Property. There is no reason to interfere with the Liquidator's recommendation.

[11] The Orders sought in respect of the approval of the transactions and vesting of purchased assets are similar in all material respects to the Commercial List Model Order.

[12] The sale transactions of the two properties are approved.

Should the Court approve the temporary sealing order sought?

[13] The Liquidator seeks an order sealing (i) the purchase agreements for the two properties, (ii) summaries of the offers received in respect of the two properties, (iii) the unsolicited offer received prior to the start of the sale process in respect of the Mississauga Road Property, and (iv) appraisals of the two properties.

[14] The Liquidator'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.

[15] 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.

- [16] 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 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.
- [17] 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 41 requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25.
- [18] The Liquidator 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 orders (with the relevant provisions highlighted) so that the confidential exhibits can be physically sealed.

Approval of fees and disbursements of the Liquidator and its counsel

- [19] In determining whether a Court officer's fees are fair and reasonable, the Court has considered the following non-exhaustive list of factors:
- a. The nature, extent and value of the assets handled;
 - b. The complications and difficulties encountered;
 - c. The degree of assistance provided by the company, its officers or employees;
 - d. The time spent;
 - e. The receiver's (or officer's) knowledge, experience and skill;
 - f. The diligence and thoroughness displayed;
 - g. The responsibilities assumed;
 - h. The results of the receiver's (or officer's) efforts; and
 - i. The cost of comparable when performed in a prudent and economical manner:

Re Nortel Networks Corporation et al, 2017 ONSC 673 at para. 14, quoting *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, quoting *Federal Business Development Bank*, 1983 CarswellNB 27, at para. 9.

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

[21] The parties are scheduled for a motion in respect of the distribution of the proceeds of sale for March 27, 2024 at 11 am (30 minutes).

[22] Orders 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. The signature is fluid and cursive, with a horizontal line extending from the end.