



Court File No.: CV-11-9456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)

THURSDAY, THE 30th

)

JUSTICE MORAWETZ)

DAY OF AUGUST, 2012

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c.B-3, as amended and SECTION 101 OF THE *COURTS
OF JUSTICE ACT*, R.S.O. 1990 c. C.43 as amended**

ORDER

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as the receiver (the “**Receiver**”) of the assets, undertakings and properties of the respondent (the “**Debtor**”), including the property known municipally as 50 Sunny Meadow Blvd., Brampton (the “**Property**”), for the relief set forth below, was heard on July 23 and 26, 2012 at 330 University Avenue, Toronto, Ontario.

ON READING the motion record dated June 18, 2012 filed on behalf of the Receiver, including the First Report of the Receiver dated June 15, 2012 (the “**First Report**”), the Supplement to the First Report dated June 28, 2012 (the “**First Supplement**”), the Second Supplement to the First Report dated July 17, 2012 (the “**Second Supplement**”), the responding motion record filed by Clark Farb Fiksel on behalf of certain unit-holders identified therein (the “**Unit Holders**”), the responding motion record filed on behalf of the applicant, and on reading the confidential appraisal, marketing proposals and confidential Deloitte Real Estate review memorandum which were provided by the Receiver but not filed, and on hearing submissions of counsel for the Receiver, counsel for the applicant, counsel for the Unit Holders, and counsel for Lawyers’ Professional Indemnity Company as insurer for Paltu Kumar Sikder, no other person appearing although served with notice of this motion according to the affidavits of service filed herein,

1. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this order shall have the meanings ascribed thereto in the First Report, the First Supplement and the Second Supplement.
2. **THIS COURT ORDERS** that the First Report, the First Supplement and Second Supplement and the activities and conduct of the Receiver described therein are hereby ratified and approved.
3. **THIS COURT ORDERS** that the Receiver’s marketing plan for the Property as described in the First Report, together with any amendments thereto deemed necessary and appropriate by the Receiver (hereinafter the “**Marketing Process**”), be and it is hereby approved and the Receiver is hereby authorized and directed to carry out the Marketing Process.
4. **THIS COURT ORDERS** that the form of offer and conditions of sale contained in the First Report (the “**Form of Offer**” and “**Conditions of Sale**” respectively) be and the same are hereby approved, together with any amendments thereto deemed necessary and appropriate by the Receiver.
5. **THIS COURT ORDERS** that the Receiver be and it is hereby authorized to:

- (a) proceed to market and offer for sale the Receiver's right, title and interest in the Property in the manner more particularly described in the First Report and in accordance with and on the terms of the Marketing Process and the Form of Offer and Conditions of Sale contained in the First Report;
- (b) enter into discussions with any and all offerors in respect of the Property;
- (c) if considered by the Receiver to be necessary or appropriate, to disclose to and review with any secured creditor of the Debtor, any of their advisors and Deloitte Real Estate any and all offers received by the Receiver to purchase the Property;
- (d) accept an offer to purchase the Property, the terms of which, in the Receiver's sole opinion, are in the best interests of the estate herein, subject to approval of this Court if required in accordance with the Appointment Order; and
- (e) enter into agreements of purchase and sale in respect of the Property on the terms of the Template Agreement (as defined in the Conditions of Sale), together with any amendments or additions thereto deemed necessary by the Receiver in its sole opinion, subject to approval of this Court if required in accordance with the Appointment Order.

6. **THIS COURT ORDERS** that, in accordance with the Conditions of Sale, the Receiver is not obligated to accept any offer or offers to purchase the Property.

7. **THIS COURT ORDERS** that the Receiver shall have no personal or corporate liability in connection with offering the Receiver's right, title and interest in the Property for sale, including, without limitation:

- (a) by advertising the Property and/or the Marketing Process;
- (b) by exposing the Property to any and all parties, including, but not limited to, those who have made their interest known to the Receiver;
- (c) by carrying out the Marketing Process;
- (d) by responding to any and all requests or inquiries in regards to due diligence conducted in respect of the Property;

- (e) through the disclosure of any and all information presented by the Receiver and its solicitors or agents (including, without limitation, Deloitte Real Estate), arising from, incidental to, or in connection with the Marketing Process;
- (f) pursuant to any and all offers received by the Receiver in accordance with the Marketing Process; and
- (g) pursuant to any agreement of purchase and sale entered into by the Receiver in respect of the sale of any of the Property.

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to market the Property directly through Deloitte Real Estate as set out in the First Report.

9. **THIS COURT ORDERS AND DECLARES** that upon receipt by the Receiver of an offer to purchase the Property that the Receiver is prepared to accept and recommend for approval by the court the Receiver is authorized to terminate, upon 30 days prior written notice, all leases, agreements to lease and agreements of purchase and sale (collectively “**Agreements**”) respecting all units of the Property, including but not limited to, the Agreements referred to in Appendix “E” to the First Report and listed in Schedule “A” attached to this order.

10. **THIS COURT ORDERS** that any lessee or purchaser who receives a notice of termination issued by the Receiver pursuant to paragraph 9 above shall, on or before the expiry of the 30 day notice period, deliver up vacant possession of the units of the Property referred to in their respective Agreements.

11. **THIS COURT ORDERS** that this order shall be without prejudice to: (i) the right of any lessee or purchaser whose Agreement has been terminated in accordance with this order to assert any claim or claims that they may have against the Debtor or its officers, directors or solicitors, including but not limited to, the return of any deposit funds paid to the Debtor or its solicitors in connection with their Agreements; (ii) the right of any lessee or purchaser to terminate their Agreements; and (iii) the right of any lessee or purchaser to assert a claim to any proceeds of sale from the sale of the Property remaining after payment in full of any amounts outstanding and owing to the applicant pursuant to its first mortgage registered against title to the Property and any amounts outstanding pursuant to any charges created by the Appointment Order.

12. **THIS COURT ORDERS** that the costs of the Receiver in preparation of this motion and of these proceedings, up to and including the hearing of this motion and the entry of this order (including applicable Harmonized Sales Tax) be paid to the Receiver from the estate herein.



G. Argyropoulos, Registrar
Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 18 2012

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RECEIVED:

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2012241 ONTARIO LIMITED

Respondent

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ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

ORDER

(Approving Marketing Process)

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