

File Reference: SM068413-00002

Josie H. Marks
Direct Dial: 506.383.2304
jmarks@stewartmckelvey.com

June 24, 2024

Via Electronic Mail

Court of King's Bench of New Brunswick
10 Peel Plaza
P.O. Box 5001
Saint John, NB E2L 4Y9

Attention: Pam Bourque, Clerk of the Court

Dear Ms. Bourque:

Re: CWB Maxium Financial Inc. v. Royal Oaks Golf Club Inc.
Court File Number: SJM-44-2024

We represent TW1 Oaks Inc. (“**TW1**”) in relation to the motion in the above-noted matter which is scheduled to proceed tomorrow, June 25, 2024 at 9:30 a.m. We ask that you kindly bring this letter to the attention of Justice Stephenson, whom we understand is seized with this matter.

TW1 was served on June 18, 2024 with the Notice of Motion, the Affidavit of Michael Lach, and the Second Report of the Receiver. TW1 further received a copy of the Brief on Application of the Receiver on June 20, 2024. We provide this correspondence in relation to the request by the Receiver for a sealing order in this matter.

As a significant creditor and shareholder of Royal Oaks Golf Club Inc. (“**ROGC**”), TW1 is an interested party in these proceedings. While the case law establishes that parties whose interests may be materially affected have standing to be heard in relation to Court approval of a sale,¹ TW1 is prevented from being able to determine whether it wishes to make submissions in this case as the details of the transaction for which approval is sought (“**the Transaction**”) are sealed.

While TW1 has no reason to doubt the submissions made by the Receiver in its Brief on Application in support of the approval order sought, it does not have access to the information necessary to identify whether it has any additional (or contradictory) submissions to provide.

As the Court is aware, sealing orders are extraordinary remedies that should be issued sparingly. It is understood that the Receiver seeks a sealing order in this case on the grounds that, if the sale does not close, disclosure of the sealed materials will compromise a future sale process. Given the Receiver's disclosure that it received five (5) bids, it is unclear why a future sale process would be required in this case, rather than moving to the next strongest bid. Further, while the case law cited by the Receiver is supportive of the ability to disclose the details of the Transaction to interested parties upon their undertaking not to participate in a future bid process (which would

¹ See e.g. *Fifth Third Bank v. MPI Packaging Inc.*, 2010 ONSC 73 at para 13.

June 24, 2024

Page 2

allow them to determine whether to make submissions to the Court on the sale approval motion), the draft sealing order proposed by the Receiver in this case foresees such possibility only after the Transaction has closed and the opportunity to make submissions has passed.

Finally, we note that the scope of the proposed sealing order appears to be broader than necessary to achieve its stated purpose (it is not limited to redaction of details needed to protect the integrity of a future bid process only, e.g. purchase price and deposit information), and further that paragraph 1 of the proposed order is contradictory in that it purports to seal the Confidential Supplement to the Report only until the Transaction has closed, but then also suggests that a further order of the Court (or execution of a confidentiality agreement) would be needed to gain access to the Transaction details even after the Transaction has closed.

For these reasons, TW1 opposes the broadly-framed sealing order requested by the Receiver, but appreciates and supports the need for expediency in these proceedings. TW1 submits that:

- If the Court determines that the Receiver has met its burden to obtain a sealing order, paragraph 1 of the draft sealing order should be amended to confirm that the Transaction details will automatically become unsealed upon the closing of the Transaction or, alternatively, that the Receiver shall provide the Transaction details to all shareholders and creditors of ROGC once the Transaction has closed.
- If the Court determines that the Receiver has not met its burden to obtain a sealing order (in whole or in part), the Court should direct the Receiver to provide a copy of the unsealed materials to interested parties immediately, following which such parties should have five (5) business days to advise the Court whether they wish to make any submissions on the Motion to approve the sale. If no request to make submissions is made, the Court could then issue its determination on the Motion without the need for further appearance.

We thank you for consideration of these submissions.

Yours truly,

STEWART MCKELVEY



Josie H. Marks

c. Tony Richardson