



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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TITLE OF PROCEEDINGS: EXPORT DEVELOPMENT CANADA v. ANTAMEX INDUSTRIES ULC
AND
ROYAL BANK OF CANADA v. 256 VICTORIA STREET WEST ULC

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
EXPORT DEVELOPMENT CANADA	Julia Chung	jchung@fasken.com
ROYAL BANK OF CANADA	Mark Borgo	mborgo@blg.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
AVIVA INSURANCE COMPANY OF CANADA	Mark Borgo	mborgo@blg.com

For RECEIVER, LIEN CLAIMANT:

Name of Person Appearing	Name of Party	Contact Info
RECEIVER	Linc Rogers	linc.rogers@blakes.com
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LIEN CLAIMANT (KRISRO INDS CORP)	Jawad Janmohamed (AGENT for Jonathan Frustaglio)	jjanmohamed@sutherlaw.com jfrustaglio@sutherlaw.com

ENDORSEMENT OF JUSTICE KIMMEL:

[1] The interested parties have been served, and none oppose, this motion by Deloitte Restructuring Inc. ("Deloitte") in its capacity as court-appointed receiver (in such capacity, the "Receiver") of (i) all the assets, undertakings and property acquired for or used in connection with the business of Antamex Industries ULC ("Antamex") and (ii) all the assets, undertakings and property of 256 Victoria Street West ULC ("256" and together with Antamex, the "Debtors"), for an order (the "Approval, Vesting and Ancillary Relief Order"):

- a. approving the Proposed Transaction between the Receiver and 2831450 Ontario Inc. (the "Purchaser"), pursuant to an agreement of purchase and sale dated August 14, 2024 (the "APS") that contemplates the sale to the Purchaser of the Alliston Premises, and authorizing and directing the Receiver to take such steps as necessary to complete the Proposed Transaction;
- b. vesting title in and to the Alliston Premises in the Purchaser, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances, upon the Receiver filing a certificate confirming, among other things, the closing of the Proposed Transaction;
- c. approving the Listing Agreement between the Receiver and CBRE Limited ("CBRE") in respect of the Alliston Premises *nunc pro tunc*;
- d. authorizing and directing the Receiver to pay the Commission to CBRE upon the closing of the Proposed Transaction;

- e. sealing the Confidential Appendices to the Second Report;
- f. directing a former employee of Antamex to return property of Antamex to the Receiver; and
- g. approving the activities and fees of the Receiver and its counsel as set out in the Second Report.

[2] RBC, the first secured creditor of the Alliston Premises and of the other property and assets of Antamex (except certain EDC priority collateral located in the United States) is not objecting to the order sought by the Receiver upon the expectation that it will be paid in full from the proceeds of the sale of the Alliston Premises and other assets over which it holds security. Nor does EDC oppose the order sought. No other stakeholder appeared or indicated in advance any opposition to this motion.

[3] The Receiver was appointed in respect of Antamex on March 5, 2024, and its mandate in respect of Antamex was expanded to include all of Antamex's assets and property on March 13, 2024 by way of the Appointment Order. The Receiver was appointed in respect of 256 on April 23, 2024 by way of the 256 Appointment Order.

Approval of CBRE Listing Agreement and APS for the Alliston Premises and Related Relief

[4] The Receiver is of the view that the Listing Agreement that produced the Proposed Transaction was commercially reasonable and efficacious. The Receiver considers the terms of the Listing Agreement to be consistent with agreements of the same circumstances and to be fair and reasonable.

[5] The Receiver had the authority to enter into the Listing Agreement under the Appointment Order and 256 Appointment Order and seeks the court's approval of the Listing Agreement *nunc pro tunc*, and approval for the payment of the Commission that the Listing Agreement provides for upon the closing of the Proposed Transaction. This approval is sought concurrently with seeking approval of the Proposed Transaction, as opposed to earlier, in order to reduce unnecessary costs to the Debtors' estates and for administrative efficiency.

[6] The marketing process carried out by CBRE pursuant to the Listing Agreement generated several competitive offers, including the Purchaser's offer for the Alliston Premises. The services provided by CBRE pursuant to the Listing Agreement were satisfactory to the Receiver. CBRE provided valuable services to the Receiver by successfully marketing the Alliston Premises. It has earned its Commission (which the Receiver considers to be set at a customary rate) and the Receiver therefore recommends approval of the Commission to be paid on closing.

[7] It is settled law that when asked to approve a transaction in a receivership context, a court must consider the factors in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), at para. 16. These factors are met in this case for the reasons outlined in paragraphs 25-28 of the Receiver's factum, as demonstrated by the following:

- a. the Receiver's efforts to get the best price through the retention of CBRE and its execution of a detailed marketing plan for the Alliston Premises;
- b. the value of the Proposed Transaction, which represents the highest and best offer received with the greatest certainty of closing;
- c. the efficacy and integrity of the sales process undertaken by CBRE, through its wide canvassing of the market to obtain the highest and best value for the Alliston Premises; and
- d. the integrity and fairness of the conduct of the sales process, that afforded all interested parties the opportunity to participate, and the absence of any objections or concerns having been raised with the Receiver. In the Receiver's view, there was no unfairness in the process leading to the Proposed Transaction, no party has been prejudiced or excluded and the range of competitive offers received informs the Receiver's conclusion that the Proposed Transaction is the highest and best offer available.

[8] Deference is to be afforded to a receiver respecting its sale process and that process's outcome, which the Receiver is recommending the court approve. See *Crown Trust Co et al v. Rosenberg et al*, 1986 CanLII 2760 (ONSC), at para. 83 and *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634, at para. 43.

[9] A vesting order is appropriate to consummate the Proposed Transaction that the court is approving based upon the Receiver's recommendation and the other factors detailed above.

Sealing Order

[10] The Receiver seeks a sealing order in respect of two Confidential Appendices to the Second Report, (i) Confidential Appendix "A" containing a summary of offers received for the Alliston Premises, and (ii) Confidential Appendix "B", the unredacted APS.

[11] The Receiver is of the view that the information and documentation contained in the Confidential Appendices is commercially sensitive information and should be sealed in order to avoid the negative impact that its dissemination would have if the sale of the Alliston Premises is not completed and other alternatives need to be explored for value maximization for the stakeholders. The Proposed Transaction has not closed and the Diligence Period is ongoing.

As a result, the Receiver is seeking a sealing order in respect of the Confidential Appendices until such time as a sale is complete.

[12] It is just, appropriate and necessary to the integrity of this receivership proceeding that the Confidential Appendices be sealed by this Court:

- a. The Confidential Appendices contain sensitive information about the value of the Alliston Premises and prospects for its sale, the disclosure of which prior to the completion of the Proposed Transaction could be prejudicial to stakeholders as it could lead to a reduction in any future sale proceeds.
- b. Sealing these Confidential Appendices is necessary and appropriate to ensure that the Receiver can maximize value for the Alliston Premises, in the interests of all stakeholders.
- c. Protecting the information contained within the Confidential Appendices is an important commercial interest that should be protected.
- d. There is no other reasonable alternative to sealing that will prevent Confidential Appendices from becoming public.

[13] 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 by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Preservation of the confidentiality of information inherent in a sale process is recognized as meeting the requirements of the test for sealing court documents in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 85 when limited to only that material that contains the confidential and sensitive information and only for as long as may be necessary, as has been proposed in this case. The sealing order will terminate upon the closing of the Proposed Transaction.

[14] In the insolvency context, courts have applied the *Sierra Club* test, including as recast in *Sherman Estate*, and granted sealing orders over confidential or commercially sensitive documents to protect the commercial interests of debtors and other stakeholders. See for example, *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, 2013 ONSC 7009, at paras. 47-48; *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173, at para. 32; *Stelco Inc, Re*, 2006 CanLII 1772 (ONSC), at paras. 2-5; *Re Canwest Publishing Inc.*, 2010 ONSC 222, at paras. 63-65; and *Ontario Securities Commission v Bridging Finance Inc.*, 2021 ONSC 4347, at paras. 23-27.

[15] Counsel is directed to ensure that the sealed Confidential Appendices are provided 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 Appendices can

physically sealed. Counsel is further directed to apply, at the appropriate time, for an unsealing order.

Return of the Laptop

[16] The Mcleod Laptop is the property of Antamex and there is no legitimate basis for Mr. McLeod to retain it. Mr. McLeod has had notice of the Receiver seeking the return of his laptop since service of the First Report on May 16, 2024.

[17] In the court's May 22, 2024 endorsement, it was noted that the Receiver could pursue the motion for return of the laptop computer from Mr. McLeod in conjunction with its next scheduled motion. The Receiver has taken reasonable steps to try to facilitate the return of the Mcleod Laptop, recognizing that the laptop may contain confidential personal information. It has been willing to engage with Mr. McLeod to try to address any concerns in that regard, but he has not responded. The Receiver now seeks an order for the return of this computer from Mr. McLeod, who has not been co-operative or responsive to the Receiver's efforts to engage with him to try to reach an amicable resolution of the issue.

[18] Mr. McLeod has had more than sufficient notice of this motion (which was adjourned by the court once already on May 24, 2024). In the absence of any meaningful engagement from Mr. McLeod, I find the requested order requiring Mr. McLeod to relinquish the laptop to the Receiver to be appropriate. The Receiver has proposed to give him until the end of the month to comply with this order and I find that timing to be reasonable as well.

Approval of the Receiver's Second Report and the Activities and Fees of the Receiver and its Counsel

[19] The proposed form of order contains the appropriate qualification regarding the approval of the Receiver's activities detailed in its Second Report, in accordance with the court's practice.

[20] The fees and disbursements of the Receiver and its counsel were incurred at each party's standard (or in one case, discounted) rates and charges as set out in their respective fee affidavits. The fees of the Receiver and its counsel for which approval is sought are supported by fee affidavits and the time and hourly rates that correspond with the fees appear to be reasonable having regard to the work that was done.

[21] I am satisfied that they are fair and reasonable having regard to the relevant factors that the Court of Appeal identified in *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (CanLII), at paras. 33 and 45, including: (a) the nature and extent of the value of the assets handled; (b) the complications and difficulties encountered; (c) the degree of assistance provided by the company, its offers or employees; (d) the time spent; (e) the receiver's knowledge, experience and skill; (f) the diligence and thoroughness displayed by the receiver; (g) the responsibilities assumed; (h) results of the receiver's efforts; and (i) the cost of comparable services.

[22] The nature of this receivership necessitated the retention of counsel by the Receiver in different jurisdictions for different purposes. The Receiver is satisfied that the work performed by Blakes, Perkins, Chipman and MHR was commissioned in connection with different aspects of the receivership proceedings, and that there has been no material overlap or duplication.

[23] Although the fees are significant, and the work of the Receiver and its counsel is not complete, "the focus of the fair and reasonable assessment should be on what was accomplished, and not on how much time it took." See *Bank of Nova Scotia v. Diemer*, at para. 45. Much has indeed been accomplished.

[24] The activities of the Receiver as outlined in the Second Report were (i) carried out in accordance with the Appointment Order and the 256 Appointment Order, (ii) consistent with the Receiver's mandate, (iii) and were done to further the objectives of securing the Debtors' assets, stabilizing its business in the short term and maximizing recoveries for stakeholders.

[25] The court encourages interim approval of the activities of court officers: see *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 2, 22-23; *Laurentian University of Sudbury*, 2022 ONSC 2927, at paras. 13-14; and 41 *Re Hanfeng Evergreen Inc.*, 2017 ONSC 7161 at para 15. This enhances and encourages transparency.

Order

[26] The provisions of the proposed form of order dealing with the approval of the APS and Proposed Transaction and vesting of the Alliston Premises in the Purchaser are consistent with the Commercial List model AVO.

[27] The Approval, Vesting and Ancillary Relief Order signed by me today shall have immediate effect without the necessity of formal issuance and entry.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in dark ink.

KIMMEL J.