

COUNSEL SLIP

COURT FILE NO.:

CV-19-615270-0002

DATE:

17-Dec-2019

NO. ON LIST

6

TITLE OF PROCEEDING

Royal Bank of Canada V. IVAC services inc. et al

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APPLICANT(S)/Mortg Parties

PETITIONER(S)

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Dec 17/19

(MP)

The moving parties seek to lift the stay in Justice Hurney's order of March 11, 2019 to pursue an appeal in Alberta of Master Schlosser's order of March 11, 2019 - that latter order discharged the MP's writ ~~order~~ registered against certain vehicles⁽⁴⁾ owned by DIG and ordered that auction proceeds from the sale of those vehicles be paid to RBC, senior secured creditor of DIG.

In considering the lift stay, I must consider the totality of the circumstances and the relative prejudice to both sides: Romper Investment Corp v Courtice 2017 ONCA 301. There is no requirement for the MP to establish a prima facie case; however, it must establish that there are sound reasons to relieve against the stay: 6E Canada v. Northern, 2012 ONSC 6664, para 34. I am entitled to consider the

merits of the litigation in determining whether there are sound reasons. MA, Re [2001] OJ No 1189, para 2.

In this case, I find that there are no sound reasons for the appeal has very little merit. The MP base their entire argument on a standard form confirmation that they RBC signed with the auctioneer. RBC ticked off the box under the first box which stated, as an afterthought, that the Bank has a security interest but did not wish to receive proceeds (which, as RBC, reflected its direct arrangements with DIG to receive proceeds & pay down the bank loan). The MPs were not a party to this form nor was RBC aware of the MP's interest at the time it signed the form. There is no express subordination or waiver language by the Bank. I would expect for more if it was subordinating or waiving its senior security rights against the 100 or so units listed attached to the form. There is no question that the Bank's security ranks ahead of the MP's registered interests if the Bank were waiving/subordinating to the MPs, it would have made this explicit to the MPs in documentation with them, not by ticking off a box in the auctioneer's form. There are simply no sound reasons to proceed w/ an appeal that has so little merit.

With respect to material prejudice, I recognize that this will end the appeal by the MPs. On the other hand, RBC will be materially prejudiced. It is seriously under water. It will have to expend additional resources to defend the appeal, for which it will not be fully reimbursed. The appeal proceedings will likely have to be served on other interested parties, which will only add to the time & expense.

Considering the totality of the circumstances & the relative prejudice, I decline to lift the stay & dismiss the motion. ~~Consequently, I award costs to RBC in the amount of \$10,000 and to the Receiver of \$2,500 all inclusive. I understand that this was the only recourse open to the MP as it did not RBC to considerable expense in defending its priority & I consider a cost award in this amount~~ to be applied Conway