



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00709164-00CL

DATE: TUES. December 17th, 2024

Before: Justice OSBORNE

NO. ON LIST:3 @10AM

STAR AMERICA DPGI ACQUISITION COMPANY, INC.

-v-

DEMAND POWER GROUP INC. ET. AL.

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
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**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
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**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

VANDERLAAN, TOM	DELORTE RECEIVERSHIP INC. THE Receiver	tvanderlaan@delortec.ca

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**ENDORSEMENT OF JUSTICE OSBORNE:**

- [1] The Receiver moves for an order:
- a. appointing the Receiver as receiver of the Partnership Units, and ordering that they form part of the Property under the Order of this Court dated November, 22, 2023;
  - b. approving a Proposed Sale Transaction contemplated by the Asset Purchase agreement dated December 4, 2024 between the Receiver and Narrows Green LP;
  - c. sealing Confidential Appendices “1” and “2” to the First Report;
  - d. amending the Receivership Order to increase the Receiver’s borrowing power and correspondingly increasing the Receiver’s Borrowing Charge;
  - e. approving the First Report and the activities of the Receiver described therein; and
  - f. approving the fees and disbursements of the Receiver and its counsel.
- [2] Defined terms in this Endorsement have the meaning given to them in the motion materials and in particular the First Report dated December 10, 2024, unless otherwise stated.
- [3] Mr. Turk appears today for certain common shareholders of Demand Power. He was just consulted last night and has not yet finalized his retainer and engagement. It appears that some, although not all, of his clients were parties to one of the bids submitted in the Sale Process. He seeks an adjournment of the motion in order that his client can determine whether they wish to challenge the Sale Process and the result.
- [4] The Receiver and the proposed Purchaser oppose the adjournment request and submit that Mr. Turk’s clients are simply “bitter bidders” whose offer was not deemed by the Receiver to be the highest and best offer in the Sale Process.
- [5] The Service List was served seven days ago.
- [6] Mr. Turk has filed no materials. On the basis of his request, I would have declined the adjournment of the motion.

- [7] ~~HOWEVER~~, I am concerned was certain of the relief sought, and in particular, the fact that the proposed sale Transaction contemplated by the Asset Purchase Agreement includes the Partnership Units in respect of which the scope of the receivership is sought to be expanded.
- [8] I am unable to conclude on the basis of the record that those Partnership Units were disclosed to, and understood by other bidders to be part of the property being sold in the Sale Process, and/or that any other bidder would be indifferent to the inclusion of those Partnership Units given that they have nominal or no value and are of interest only to this particular Purchaser.
- [9] In the circumstances, I was not satisfied with the state of the evidence and adjourned the motion with respect to the expansion of the Property in the Receivership Order and approval of the Transaction, in order that the Receiver and other interested parties, if necessary, may file materials to address the deficiencies that concerned me today, as discussed at the hearing.
- [10] That motion will be heard on **January 14, 2025 commencing at 11 AM via Zoom and continuing as necessary for two hours.**
- [11] Mr. Turk will confirm to the Receiver and the other parties within 48 hours the names of the parties for whom he acts, and confirm whether they were parties to the bid submitted in the Sale Process or not.
- [12] As to the balance of the relief sought, first, I am satisfied that the proposed sealing order should be granted. The Confidential Appendices contain commercially sensitive information that is directly relevant to an analysis of the bids received, the terms and economics of the bids, and will therefore affect any sale process in the event the proposed Transaction is not approved. The sealing order is sought to be in effect only until the Transaction closes or further order of the Court, and applies only to those limited materials.
- [13] I am satisfied that the proposed relief is proportionate and necessary in the circumstances, and in particular, that the factors set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* are met such that I grant that relief pursuant to section 137 of the *Courts of Justice Act*.
- [14] Second, I am satisfied that the Receivership Order should be amended to increase the Receiver's borrowing power and the corresponding charge. That is clearly necessary and appropriate for the reasons set out in the First Report and is not opposed.
- [15] Finally, I am satisfied that the fees and disbursements of the Receiver and its counsel as described in the First Report and the fee affidavits appended thereto, are appropriate, reasonable, and they are approved: *Bank of Nova Scotia v. Diemer*.

