

CITATION: *First National Financial GP Corporation v. Golden Dragon HO 10 Inc. et al.*
2021 ONSC
COURT FILE NO. 17-73967
DATE: 20210512

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: First National Financial GP Corporation, Applicant

AND

Golden Dragon HO 10 Inc. and Golden Dragon HO 11 Inc., Respondents

BEFORE: The Honourable Justice C.T. Hackland

COUNSEL: David P. Preger and David Z. Seifer, for the Receiver, Deloitte Restructuring Inc.

Martin Diegel, for the Respondents Golden Dragon

Thomas G. Conway and Kevin Caron, for Liahona Mortgage Investment Corp.

Eric Golden, for First National GP Corporation

HEARD: March 19, 2021

ENDORSEMENT (APPROVAL OF RECIEVER'S 10TH REPORT)

[1] The court appointed receiver, Deloitte Restructuring Inc. seeks approval for its Tenth Report dated February 5, 2021 and the Supplemental Report to its Tenth report dated March 17, 2021 dealing with its ongoing administration of the receivership of the 345 and 347 Barber St. properties in Ottawa.

[2] The Receiver's Tenth report outlines the Receiver's activities detailed therein and the Supplement outlines the parties agreement regarding FN's costs of the Trial Issues heard before this court heard on July 22, 30, 31 and August 12 and 13, 2020. The Tenth report also documents the fees and disbursements of the receiver from September 1, 2019 to January 29, 2021 and its counsel Dickinson Wright LLP from August 11, 2020 to February 4, 2021.

[3] All parties supported the approval sought for the contents of the Tenth report and the Supplement, except only that the debtors are seeking a reduction of the Receiver's fees, as discussed below.

[4] The debtors (the mortgagors) submit that the receiver, Mr. Bricks from Deloitte's, should not have attended all 4 days of the Trial of Issues. This was a Zoom hearing that ultimately turned on the interpretation of mortgage documentation and points of law and it is suggested he could have been available to attend remotely if and when required. In my view, it is not particularly helpful to look back, after the events, and postulate that the receiver might have been excused from the hearing. That type of issue warrants discussion prior to the hearing. In any event the administration of this receivership has been very contentious and both the mortgagors and the second mortgagee have been highly critical of certain of the receiver's actions, especially relating to the sale of the two properties and the obtaining of the expanded powers order to authorize the sale. If it had been suggested to me that the receiver be excused from attendance at the trial of issues, I would have discouraged the idea. I have found the ongoing advice of the receiver, through counsel, to be invaluable throughout this contentious matter.

[5] The mortgagors also seek a reduction in the time Mr. Bricks has charged for his involvement in the preparation and review of the Receiver's Ninth and Tenth Reports and also some of his time on the Eighth Report. A reduction of 50% of his fees is sought. The suggested reductions total \$14,595. The accounting and priorities issues in this receivership relate to two separate apartment buildings on two separate but linked properties, which gave rise to a series of accounting and financial issues, discussed in detail in these reports. There are substantial sums of money involved. The case is currently proceeding on appeal to the Court of Appeal for the second time.

[6] The legal test for reviewing a receiver's fees and those of its counsel have been addressed by the Court of Appeal in *Bank of Nova Scotia v Diemer*, 2014 ONSC 365, by Pepall J.A.:

[33] The court endorsed the factors applicable to receiver's compensation described by the New Brunswick Court of Appeal in *Belyea: Bakemates*, at para. 51. In *Belyea*, at para. 9, Stratton J.A. listed the following factors:

- the nature, extent and value of the assets;
- the complications and difficulties encountered;
- the degree of assistance provided by the debtor;
- the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and

- the cost of comparable services when performed in a prudent and economical manner.

[7] Justice Pepall further stated:

[45] That said, in proceedings supervised by the court and particularly where the court is asked to give its imprimatur to the legal fees requested for counsel by its court officer, the court must ensure that the compensation sought is indeed fair and reasonable. In making this assessment, all the *Belyea* factors, including time spent, should be considered. However, value provided should pre-dominate over the mathematical calculation reflected in the hours times hourly rate equation. Ideally, the two should be synonymous, but that should not be the starting assumption. Thus, the factors identified in *Belyea* require a consideration of the overall value contributed by the receiver's counsel. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took. Of course, the measurement of accomplishment may include consideration of complications and difficulties encountered in the receivership.

[8] I am of the view that the time spent by the receiver was reasonable in the context of this highly contentious case. Mr. Brick's hourly rates are not the subject of any objection. The Receiver's reports are the means by which the court is able to appreciate and assess the legal and financial issues as they unfold and to carry out its oversight responsibilities. Carefully prepared and accurate Reports such as the Receiver has prepared in this case are essential. The contentious sale process addressed in these Reports was carried out efficiently at fair market value, to the benefit of all stakeholders.

[9] The mortgagors' conduct necessitated the appointment of a receiver in the first place and they have done nothing to assist with the smooth administration of this receivership and indeed did their best to vigorously oppose the court approved sale. An element of co-operation on the mortgagors' part would have reduced the professional fees of all concerned.

[10] In the court's view, the Receiver's Reports reflect its diligence and thoroughness displayed throughout and are of great assistance to the court. The receivers accounts will be accepted as proposed in the Tenth report, without reduction.

Disposition

[11] The Receiver's Tenth Report and the Supplement thereto are approved, including the professional fees for which court approval is sought. I ask that an updated order in this respect be provided by the Receiver for my signature.



Mr. Justice Charles T. Hackland

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Corporation

ENDORSEMENT

Justice Charles T. Hackland

Released: May 12, 2021