

June 30-15

June 30/15 M. Morling, for HSBC  
K. Mahar, for Receiver  
H Goldberg, self repd

The Receiver seeks 2 orders today. The first is approving its 1st report & activities & permitting it to assign the company into bankruptcy. There is no issue that the CR is in default of paying its liabilities <sup>as they become due</sup> & has committed an act of bankruptcy. I am further satisfied, having reviewed the record, that it is time for a trustee, with broad powers to <sup>or then</sup> take steps in for the benefit of all creditors. MR Goldberg opposes this order, as he has complaints with how the Receiver has conducted the receivership so far - although he has not filed any evidence in support & is non specific in his submissions. Quite frankly, his submission makes no sense - if he is not happy w/ the receivership, as a creditor his rights would be more than much more protected by having a trustee in place. I am granting the Order. The second order is to approve the sale of the Vaughan property pursuant to the Mazza agreement.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD  
(RETURNABLE ON JUNE 30, 2015)

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Lawyers for the Receiver

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The R's record WRT negotiating the terms to eliminate a commission, seeking 3 listing quotes, & avoiding further carrying costs satisfies me that further marketing of the property is not desirable & that the R is unlikely to generate further net sale proceeds for it. Mr Goldberg, <sup>(Addition)</sup> as secured creditor, wishes to redeem the 1st mortgage & stop the R's sale to Mazza. He submits that his position is prejudiced otherwise & in particular that he will rank behind the Recipient's charges. There are several problems with his position:

1. Mr G did not oppose the Rec. appointment. He would/should have known at that point that his security would fall below Rec. charges.
2. Mr G did not engage the court's process to redeem the 1st mtge. He did not seek to lift the stay. He did not formally issue a notice of redemption. He now comes at the 11th hour seeking to stop the court approved process that has been in place since April - this defeats the utility of that process - see BDC v Marlwood Golf 2015 CVSC 3909, at paras 26-27.
3. To the extent that Mr G takes issue with the R's costs in proportion to his secured interest, he will be able to address that issue on a distribution motion. That issue will not preclude approval of the sale if the court is otherwise satisfied with the sale & the manner in which it was conducted, etc.

I am satisfied that the sale is to be approved & that the Sordani principles have been met. I grant the approval & vesting order.  
Conway A.