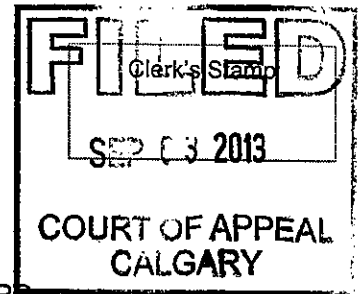


APPEAL NUMBER:

1301-0244AC

COURT

COURT OF APPEAL OF ALBERTA



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF UBG BUILDERS INC., ALBERTA BUILDERS CAPITAL INC., ALPINE HOMES (2006) INC., AMERICAN BUILDERS CAPITAL (US) INC., EDGEWATER AT GRIESBACH INC., ELITE HOMES (2006) LTD., EVOLUTION BY GREENBORO INC., GREENBORO COMMUNITIES (2006) INC., GREENBORO ESTATE HOMES (2006) LTD., GREENBORO HOMES (2006) LTD., GREENBORO LUXURY HOMES INC., HIGH POINTE INC., MOUNTAINEERS VILLAGE (2006) INC., MOUNTAINEERS VILLAGE II INC., ORIGINS AT CRANSTON INC., SOUTH TERWILLEGAR VILLAGE INC., THE BRIDGES MANAGEMENT INC., THE LEDGES INC., TIMBERLINE LODGES (2006) INC., TODAY'S COMMUNITIES (2006) INC., TODAY'S HOMES (2006) INC., TUSCANY DEVELOPMENTS (2006) INC., UBG ALBERTA BUILDERS (2006) INC., UBG ALPINE HOMES (2006) LTD., UBG BRIDGES INC., UBG BUILDERS (USA) INC., UBG COMMERCIAL INC., UBG LAND INC., UBG LOT DEPOSIT CORP., UBG 4500 CALGARY INC., UBG 75 CANMORE INC., UBG 808 CALGARY INC., UNITY INVESTMENTS (2012) INC., VALMONT AT ASPEN STONE INC., VALOUR PARK AT CURRIE INC., VILLAGE AT THE HAMPTONS INC., VILLAGE ON THE PARK INC., WILDERNESS HOMES BY RIVERDALE INC., WILDERNESS RIDGE AT STEWART CREEK INC. (COLLECTIVELY, THE "APPLICANTS")

DOCUMENT

MEMORANDUM OF ARGUMENT OF THE PURCHASER RESPONDENT, 771280 ALBERTA LTD.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Bishop & McKenzie LLP
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 Calgary, Alberta, T2P 3S8
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 File No. 101,975-003 (RNA/sla)

FACTS

1. The Respondent, 771280 Alberta Ltd. ("771"), opposes the application of the second highest bidder in the bid process, Streetside Development Corporation ("Streetside"), for a stay of the Vesting Order granted by Justice Kent on August 30, 2013.

2. This legal action involves insolvency protection granted to a number of companies, one of which is Valmont at Aspen Stone Inc. ("Valmont"). Valmont owns lands in the Aspen district of Calgary that it had offered for sale in these proceedings ("Valmont Lands").
3. 771 was asked by the Monitor, Ernst & Young Inc., to make a Stalking Horse Offer respecting the Valmont Lands. The Stalking Horse Offer was made by 771 and was approved by Court Order granted on July 10, 2013.
4. Pursuant to the Court Order, any interested party could make a bid to purchase the Valmont Lands on or before August 9, 2013. There were certain requirements in order for a bid to be worthy of consideration by the Monitor and the Court.
5. Four offers were received by the Monitor on or before August 9, 2013. The offer of 771 was the highest offer at an amount of \$13,509,000.00. The second highest offer was from Streetside, with an offer price of \$13,500,000.00. However, the acceptance of any offer other than that from 771 resulted in a \$200,000.00 break fee being payable to 771 pursuant to the Stalking Horse process. Therefore, the offer of Streetside would provide the insolvency estate of Valmont with an amount of \$13,300,000.00.
6. Pursuant to Court Order, the Monitor selected the bid of 771 as the most favourable offer and sought a Vesting Order from Court of Queen's Bench on August 29. Despite the objection of Streetside, Justice Kent granted the Vesting Order on August 30, 2013.

ARGUMENT

7. In order to obtain a stay of the Order of Justice Kent, Streetside must satisfy all three components of the test that is applicable to stay applications. Streetside must show that there is a genuine issue involved, that it will suffer reparable harm if the stay is not granted and that the balance of convenience favours the granting of the stay. It is 771's position that Streetside fails on all three counts.

8. Based on the arguments made by Streetside before Justice Kent, it is submitted that there is no genuine issue for trial. Streetside advanced four arguments. The first was that 771's offer was suspicious in that, on its face, it was for only slightly more money than that of Streetside. However, the evidence showed that the offer of 771 was actually received by the Monitor after Streetside's offer, so the allegation of Streetside's offer being leaked to 771 has no merit.
9. Streetside's concern about the form of 771's offer being modified on August 12 at the request of the Monitor, with no material terms being changed, likewise has no merit. The offer of 771 as presented to the Monitor on August 9 was in compliance with the direction of Court of Queen's Bench, that any new offers after the Stalking Horse Offer be "in form and substance substantially similar to the [Stalking Horse] Offer".
10. Streetside's third argument relates to whether 771 was entitled to receive its \$200,000.00 break fee if it was the highest bidder. The Monitor and 771 are clear that, following the usual practice in insolvency matters, if the Stalking Horse bidder is the successful bidder, it does not also receive its break fee. Even if it did in this case, the offer of 771 was still for a larger amount than Streetside's offer.
11. The final argument of Streetside relates to a term in the Amending Agreement between Valmont and 771 dated August 21, 2013. The amendment simply states that as a result of the extension of the closing date from August 23 to September 6, 2013, 771 will be responsible for all trade payable invoices relating to the construction of the project on the Valmont Lands from and after August 23, 2013. This clause does not otherwise alter the purchase price of \$13,509,000.00.
12. Considering all of the above matters, we submit that there is no genuine legal issue being advanced by Streetside in this matter.

13. With respect to the second component of the test for a stay, we submit that there will be no irreparable harm to Streetside if the stay is not granted. Streetside was a bidder in an insolvency proceeding whose bid was less than the best bid available. It spent some time doing its due diligence and decided upon the price it was willing to pay for the Valmont Lands. The bidding process was controlled by the Monitor and the offers were confidential. Streetside's bid was not the highest, and was therefore rejected by both the Monitor and the Court. It is true that the Valmont Lands are to be sold by the time that an appeal hearing of Justice Kent's Order can be convened. This is the case in virtually every bidding process. Time is of the essence in these situations. Creditors of the insolvent entity wish to be paid as soon as possible. The successful purchaser has a limited time to get its financing and other affairs in order to complete the transaction. The judicial selling of the property of an insolvent party prior to an appeal hearing brought by an unsuccessful bidder is not irreparable harm.
14. The harm to 771 if the stay is granted is severe. 771 has spent over six months of time and incurred significant expenses in evaluating this project. It placed the Stalking Horse Offer in order to allow the sale process to be completed in quick fashion. Pursuant to Court Order, it has only until Friday, September 6, 2013 to complete the transaction. With the Vesting Order having been granted on August 30, it has worked diligently to meet the closing date. Its financing will be lost if the stay is granted. 771 has executed a \$24,000,000.00 commitment letter in order to complete the transaction, which involves a \$125,000.00 fee. This may be forfeited if it does not close the transaction. It has incurred other costs and expenses as well.
15. The integrity of the judicial tendering process is at risk in this application. If the stay is not granted, the highest bidder will be able to close the transaction and the highest amount of funds emanating from the bidding process will be available to the estate. If the stay is granted, however, the highest bidder will not be entitled to close the transaction on September 6, at great cost to itself both in terms of time and money. In essence, the stay itself would result in the unsuccessful offeror being elevated to a position over that of the highest bidder. It would ultimately force a new tendering situation irrespective of the ultimate outcome of the appeal hearing. Streetside, as an unsuccessful tenderer, will have achieved its

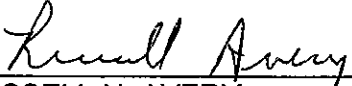
goal of forcing a new tendering process, where it could put forward a higher bid with knowledge of 771's offer. 771, as the successful offeror in the tendering process, would be relegated to the position of a potential bidder.

16. It is submitted that this is not a situation that the Court of Appeal would wish to sanction. It would allow any unsuccessful tenderer to defeat the judicial sale process by successfully seeking a stay of the Vesting Order pending appeal. Parties would be reluctant to take part in a judicial bidding process if they knew that unsuccessful bidders could undermine the process by obtaining a stay of the Vesting Order pending appeal.
17. For the reasons set out above, it is submitted that Streetside also fails on the balance of convenience test. In addition to the injury that would be suffered by 771 if the stay were granted, there are obviously other stakeholders to consider. The senior secured creditor, Bank of Nova Scotia, and the lien claimants, all expect to be paid in full with the sale of the Valmont Lands to 771. This will be delayed and may not occur at all if the stay is granted. Furthermore, Bank of Nova Scotia is the DIP lender on the project. The DIP financing expires on September 12, 2013, and it is the understanding of 771 that this financing will not be continued. This would likely result in the construction at the Valmont Lands coming to an end and potentially a new insolvency proceeding being initiated by Bank of Nova Scotia. There would be significant costs and delays. All of these concerns far outweigh the interests of an unsuccessful offeror who is disappointed at being outbid in a judicial proceeding.

Estimated time of argument: 15 minutes

All of which is respectfully submitted this 3rd day of September, 2013.

BISHOP & McKENZIE LLP



RUSSELL N. AVERY
Solicitors for 771280 Alberta Ltd.