



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00699908-00CL

DATE: January 30, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: NHE CAPITAL CORP. V 111 SHERWOOD INVESTMENTS INC.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant:

Name of Person Appearing	Name of Party	Contact Info
David Z. Seifer	NHE Investment Corporation	dseifer@dickinsonwright.com

For Defendant, Respondent:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jamie Ernst Counsel for the moving party	KSV	ernst@bennettjones.com
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Geoff Daley, Counsel	City of Brantford	gdaley@brantford.ca

ENDORSEMENT OF JUSTICE J. DIETRICH:

[1] KSV Restructuring Inc as court-appointed receiver (the “Receiver”), of all of the assets, undertakings and properties of 111 Sherwood Investments Inc. (the “Company”), including the property municipally known as 111 Sherwood Drive, Brantford, Ontario (the “Real Property”) seeks two orders today.

[2] First, an approval and vesting order is sought approving the sale transaction (the “Transaction”) contemplated by an agreement of purchase and sale between 10 John Holdings Inc. (the “Purchaser”) and the Receiver (as may be amended, the “APS”) and vesting in Sherwood 111 Investments Inc., the assignee of the Purchaser (the “Assignee”), all of the Company’s rights, title and interest in and to the property described in the APS.

[3] Second, an ancillary order is sought:

- a. authorizing the Receiver to distribute the net sale proceeds of the Transaction and any other funds realized as part of these receivership proceedings to NHE as set out in the Second Report (as defined below), up to the amount owing to NHE by the Company and secured by NHE’s mortgage;
- b. approving the Second Report of the Receiver dated January 21, 2025 (the “Second Report”) and the Receiver’s activities described therein;
- c. approving the fees and disbursements of the Receiver and its counsel as detailed in the Fee Affidavits appended to the Second Report as well as a fee accrual in the amount of \$150,000;
- d. sealing the Confidential Appendices to the Second Report;
- e. discharging the Receiver upon the filing of a certificate with the Court certifying that all outstanding matters in these receivership proceedings have been completed to the satisfaction of the Receiver (the “Discharge Certificate”); and
- f. releasing and discharging the Receiver, upon the filing of the Discharge Certificate, from any and all liabilities arising out of its acts or omissions while acting as Receiver, save and except for any gross negligence or willful misconduct.

[4] No objections to any of the relief sought were raised today.

[5] Defined terms not otherwise defined herein have the meaning provided for in the Receiver's factum filed in support of this motion.

Approval and Vesting Order

[6] On June 3, 2024, this Court granted an order (the “Sales Process Approval Order”), among other things, approving a sales process in respect of the Real Property (the “Sales Process”), and approving a listing agreement between the Receiver and Colliers Macaulay Nicolls Inc. The Second Report outlines the conduct of the Sales Process which was in accordance with the Sale Process Approval Order.

[7] The Sale Process provided for an 'Offer Not Before Date' of July 25, 2024. A number of offers were received on or following the Offer Not Before Date and not accepted by the Receiver given their price and / or conditionality.

[8] On October 28, 2024, the Purchaser submitted a revised unconditional offer which contemplated the highest consideration of all offers received during the Sales Process – other than a conditional offer submitted by Mr. Mark Accardi, a director and officer of the Company. However, Mr. Accardi did not submit a firm offer.

[9] Deposits totaling \$750,000 have been received by the Receiver in respect of the Transaction. The only material condition to closing of the Transaction is the issuance of the requested approval and vesting order.

[10] The principles to be applied when determining whether to approve a sale transaction were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* (“*Soundair*”): (a) whether the receiver has made sufficient effort to obtain the best price and has not acted improvidently; (b) the efficacy and integrity of the process by which offers have been obtained; (c) whether the interests of all parties have been considered; and (d) whether there has been unfairness in the working out of the process.

[11] I am satisfied that the *Soundair* principles have been met. The Transaction contemplates the highest consideration of all offers received in the Sales Process, other than conditional offer from Mr. Accardi which never became firm. The Second Report outlines that the market was broadly canvassed and the Sales Process was carried out in accordance with the Sales Process Order. There is no suggestion that the Receiver has acted improvidently, rather the Transaction is supported by NHE, the Company's first secured creditor, notwithstanding that the amounts owing to NHE are not expected to be repaid in full.

[12] There are also two secured creditors subordinate to NHE. Although those secured creditors were served with the Receiver's motion, they did not appear today. Counsel for the City of Brantford did appear today to advise that they have had discussions with counsel to the Receiver and the City of Brantford is satisfied with the form of order sought and the treatment of municipal taxes as discussed with the Receiver.

[13] The Transaction is approved. The terms of the requested approval and vesting order, revised as discussed at the hearing today, are based off of the Commercial List Model Order and I am satisfied they are appropriate in the circumstances.

Ancillary Order

[14] As of January 10, 2025, the Company is indebted to NHE in the amount of approximately \$13.6 million, with interest, costs and expenses continuing to accrue. The Receiver has received an opinion from its independent legal counsel that the security granted to NHE by the Company is valid subject to typical assumptions and qualifications.

[15] Pursuant to the terms of the Ancillary Order, the Receiver is seeking authorization to distribute the net sale proceeds from the Transaction to NHE, subject to the Fee Accrual and any accrued and unpaid expenses as well as to make further distributions to NHE from any unused portion of the Fee Accrual or other funds recovered in these receivership proceedings, up to the amount owed to NHE by the Company on a secured basis. As noted above, it is not expected that NHE will be repaid in full.

[16] In the circumstances the distribution is appropriate and is approved.

[17] The Receiver is also seeking approval of the Second Report and the activities of the Receiver set out therein. The activities of the Receiver described in its Second Report were necessary and undertaken in good faith and are approved.

[18] The fees and disbursements of the Receiver and its legal counsel, including the fee accrual in respect of the estimated costs to complete, as set out in the Second Report are also reasonable in the circumstances and are approved.

[19] The proposed Ancillary Order authorizes the Receiver to issue the Discharge Certificate following the completion of the Transaction and the administration of the Receiver's Remaining Duties. I am satisfied that the discharge of the Receiver is appropriate given that following closing of the Transaction all of the Company's known assets will have been realized and such proceeds will have been distributed in accordance with the Ancillary Order. The proposed releases are consistent with the releases granted by this Court in other receivership proceedings as referenced at footnote 69 of the Receiver's Factum and include the standard carve outs for gross negligence or willful misconduct.

[20] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Purchased Assets in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the Second Report meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the receiver to file a hard copy of the confidential appendices with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.

[21] Orders to go in the forms signed by me this day.

A handwritten signature in black ink, consisting of a stylized initial 'J' followed by a horizontal line, positioned above the printed name 'Justice J. Dietrich'.

Justice J. Dietrich