



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: June 3, 2024

NO. ON LIST: 2

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

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|-------------------|-----------------------------|
| David Seifer | NHE CAPITAL CORP. | dseifer@dickinsonwright.com |
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For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------|
| | | |

For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|--|-------------------------|
| Jamie Ernst | KSV RESTRUCTURING INC. The Receiver | ernstj@bennettjones.com |
| Sean Zweig | KSV RESTRUCTURING INC. The Receiver | zweigs@bennettjones.com |
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ENDORSEMENT OF JUSTICE KIMMEL:

[1] The interested parties have been served, and none oppose, this motion by KSV Restructuring Inc. as receiver and manager (in such capacity, the "Receiver"), without security, 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").

[2] The Receiver seeks an order approving a sale process in respect of the Real Property (the "Sale Process"), which includes approving a listing agreement (the "Listing Agreement") between the Receiver and Colliers Macaulay Nicolls Inc ("Colliers"), and other ancillary relief.

[3] The Company's first ranking senior secured creditor is NHE Capital Corp. ("NHE"). As of April 12, 2024, the Company was indebted to NHE for approximately \$12.35 million, plus interest, costs and expenses which are continuing to accrue. The Company went into default of the NHE Loan in February 2024. NHE supports the Receiver's motion.

[4] There are two other subordinate mortgages registered against title to the Real Property: Olympia with a second ranking charge registered in the amount of \$7,965,000 and Reif with a third ranking charge registered in the amount of \$500,000. According to the Company's books and records, there is approximately \$297,000 owing to unsecured creditors. The Receiver is not yet aware if the Canada Revenue Agency has a claim against the Company. No interested party has indicated any objection to the relief sought by this motion.

Approval of Listing Agreement and Sale Process

[5] At the commencement of these proceedings, the Receiver solicited proposals from two realtors to act as the listing agent for the Real Property, subject to court approval. The realtors are known to the Receiver as having considerable experience in the listing and sale of commercial and industrial properties in southwestern Ontario and are both well positioned to market the Real Property to potential buyers. Colliers was selected as the listing agent for the reasons indicated in paragraph 4 of its First Report dated May 28, 2024 (the "First Report"). The Receiver's reasons for this choice are sound.

[6] Two tenants of the Real Property have been identified as having rights of first refusal. The Receiver is in the process of reviewing the tenants' lease agreements and has indicated that the rights of these tenants may need to be addressed at a later date when Court approval of a sale transaction is recommended.

[7] The Sale Process that the Receiver developed with Colliers is set out in detail in section 4.2 of the Receiver's First Report. The terms of the Sale Process are consistent with other sale processes approved by the Court in real estate receiverships.

[8] The Sale Process is recommended by the Receiver, to whom the court grants considerable deference. See *Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 (ON CA), at para 23; see also *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, at paras. 43-45 citing *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, 2021 ONCA 375 at para 15.

[9] The Receiver's reasons for recommending the Sale Process are stated in section 4.1 of the First Report to be as follows:

- a. The Sale Process is a fair, open and transparent process intended to canvass the market broadly on an orderly basis. The terms are consistent with real estate sale processes approved in the context of receivership proceedings;
- b. There will be no delay commencing the Sale Process as Colliers has already commenced its underwriting process and has prior experience marketing the Real Property. This should allow for the process to be conducted on a timely basis, which will assist to reduce costs;
- c. The duration of the Sale Process is sufficient to allow interested parties to perform diligence and to submit an offer on or before the offer deadline, which is tentatively July 8, 2024. The marketing process is anticipated to last approximately five weeks, subject to the Receiver's right to extend or amend timelines, as appropriate;
- d. Colliers' team for this mandate is based out of its Toronto and Southwestern Ontario offices, has experience selling industrial/commercial properties in the Brantford area and has national reach. The Receiver is of the view that Colliers' commission rate is consistent with market rates; and
- e. NHE supports the Sale Process, including Colliers' engagement.

[10] These considerations, and the absence of any opposition by interested stakeholders, are aligned with the recognized factors for the court to consider when asked to approve a sale process. See in *CCM Master Qualified Fund v. blutip Power Technologies*, 2022 ONSC 1750, at para 6, citing *Royal Bank of Canada v. Soundair*, 1991 CanLII 2727 (ONCA), a para 16.

[11] The approval order also authorizes the Receiver to take any and all steps necessary to commission environmental studies and/or reports as may be required, in the sole discretion of the Receiver, to facilitate the Sale Process. All tenants located on the Property are required to cooperate with the Receiver and provide reasonable access of their leased spaces to the Receiver and any professional retained to assist with the Sale Process, including any such studies or reports. This further authority is intended to support the value maximization efforts of the Receiver, should it be deemed necessary.

[12] The Listing Agreement and Sale Process are approved.

Approval of Receiver's Activities in the First Report

[13] The proposed form of order contains the appropriate qualification regarding the approval of the Receiver's activities, in accordance with the court's practice.

[14] It has become the court's practice to approve a receiver's activities periodically during the receivership proceedings, rather than waiting until the end. See *Re Hanfeng Evergreen Inc.*, 2017 ONSC 7161 at paras 15-17, 21; *Triple-I Capital Partners Limited v. 124/7300 Canada Inc.*, 2023 ONSC. 3400 at para 65-66.

Order

[15] The Order approving the Listing Agreement and Sale Process, and granting other ancillary relief, signed by me today shall have immediate effect without the necessity of formal issuance and entry.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.