



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00715326-00CL
CV-24-00715321-00CL

DATE: June 21, 2024

NO. ON LIST: 4/5

TITLE OF PROCEEDING: Constantine Enterprises Inc., et al v. Sam M (180 Saw) LP Inc., et al

BEFORE JUSTICE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	Counsel for the Receiver., KSV Restructuring Inc.	Jennifer.stam@nortonrosefulbright.com
Jane Dietrich	Counsel for the Applicant, Constantine Enterprises Inc.	Jdietrich@cassels.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Michael Osborne	Counsel for the Respondent, Sam M (180 SAW) LP Inc., and Sam M (180 SAW) Inc.	mosborne@cozen.com
Jonathan Piccin	Counsel for the Respondent, Penegal Trim & Supply Inc.	jp Piccin@piccinbottos.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Bobby Kofman	Receiver, KSV Restructuring Inc.	bkofman@ksvadvisory.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] This was a motion by the KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the “Receiver”) of the Property (as defined in the Receivership Order).
- [2] The Receiver seeks:
- (a) An order approving a sale process (the “Sale Process”) for the sale of the Property; and,
 - (b) An order approving an agreement of purchase and sale dated June 14, 2024 (the “Stalking Horse APS”) between the Receiver and Constantine Enterprises Inc. (“CEI”), as purchaser, solely for the purpose of constituting the “stalking horse bid” in the Sale Process.
- [3] The proceedings relate to and arise from somewhat complex partnership interests (the “Partnership”) in the proposed development of a property at 180 Steeles Avenue West, in Vaughn, Ontario (the “Steeles Real Property”).
- [4] The limited partnership interests in the Partnership are held one-third by Sam M (180 SAW) LP (the “Mizrahi Partner”) and two-thirds by CEI.
- [5] Mizrahi Constantine (180 SAW) Inc. (the “General Partner”), is owned 50% by Sam M (180 SAW) Inc. (the “Mizrahi Shareholder”) and 50% by CEI.
- [6] On June 4, 2024, this court made an order (the “Receivership Order”), appointing KSV as Receiver of the Property, consisting of Mizrahi’s one-third interest in the Partnership, and Mizrahi Shareholder’s 50% ownership in the general partner. The Receivership Order does not extend to the Partnership’s assets, including the Steeles Real Property on which the development is proposed. CEI does, however, hold security over the Property.
- [7] CEI is the senior secured creditor of Mizrahi Partner and Mizrahi Shareholder, and their indebtedness totals just shy of \$29 million.
- [8] The purpose of the Sale Process is to market the Property for sale, and the Stalking Horse APS is intended by the Receiver to establish a base-line purchase price for the Property, while enabling the Receiver to test the market to obtain a superior transaction.
- [9] The Receiver intends to engage CBRE Limited (CBRE) to market the Property for sale. CBRE is a leading real estate brokerage, and is familiar with the Property as it was retained by the Partnership in 2022, in an earlier (unsuccessful) effort to sell the project.
- [10] The proposed Sale Process is outlined in the First Report of the Receiver, and contemplates the marketing and sale of the Property over a 6-8 week period including a bid deadline 45 days after the approval of the sale process by the court, during which time CBRE, in consultation with the Receiver, will advertise and market the Property for sale. Other aspects of the Sale Process, as outlined in the evidence before me, including in the Receiver’s First Report, appear reasonable and appropriate.
- [11] The Stalking Horse APS features a purchase price of \$8,000,000.00 (to be satisfied by a credit bid), and is to close no later than 10 days after court approval of an approval and vesting order. The Stalking Horse

APS may be terminated if it is not selected as the successful bid, or if the seller completes a Superior Transaction (as defined) with a party other than the purchaser (or affiliate of the purchaser).

- [12] At the time the motion came before me, no materials had been provided or uploaded to Caselines opposing the relief sought.
- [13] Based on my review, I was prepared to grant the order sought. As touched on above, it appeared to me that the Sale Process was reasonable and appropriate, would yield the best available price, and was fair and beneficial to all stakeholders. The Sale Process appeared transparent and fair, and commercially efficacious. The Sale Process is also supported by the only secured creditor, CEI.
- [14] At the hearing of the motion, Mr. Osborne appeared for the Mizrahi Partner and the Mizrahi Shareholder.
- [15] He submitted that the materials for the motion had been “short-served” and that the date for the motion had not been cleared with him or his co-counsel. Moreover, he advised, his co-counsel are not available on today’s date (including his partner Mr. Weiss, who is apparently out of the country). Mr. Osborne advised that he is a commercial litigator, but not versed in insolvency law, which is the domain of his partner Mr. Weiss.
- [16] With that qualification he advised, at a high level at my request, that his clients have concern about the Stalking Horse APS in particular, and consider it to be structured in a fashion to favour CEI and to guarantee that CEI will be allowed to purchase the interests of the Mizrahi Partner and the Mizrahi Shareholder at a discount price.
- [17] It is not evident to me that these concerns are valid, but in light of the somewhat abbreviated service (for which I do not fault the Receiver’s counsel) and Mr. Osborne’s submissions that Mr. Weiss, with his expertise in insolvency matters, needs to be present in particular to address in more detail the concerns about the Stalking Horse APS, I suggested for consideration that I would be prepared to make the order sought by the Receiver, but allow a “comeback” in the near term to permit Mr. Weiss and/or other counsel to present more fulsome argument about the Stalking Horse APS.
- [18] I see no reason to hold up the Sale Process otherwise; in my view it will be to the benefit of all stakeholders to commence that process which, as set out above, will proceed over many weeks.
- [19] Accordingly, I grant the orders sought, with the proviso that counsel for Mizrahi Partner and Mizrahi Shareholder may present argument before me, on July 9, 2024 at 11:00 a.m. for one hour with respect to the Stalking Horse APS. The Receiver had filed materials, of course, in support of its motion, but I advised Receiver’s counsel, and confirm here, that if the Receiver wishes to file materials more focused on the Stalking Horse APS, it may do so (and of course I expect counsel for Mizrahi Partner and Mizrahi Shareholder to file their own materials as well).



W.D. BLACK J.

DATE: JUNE 21, 2024