



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00717051-00CL

DATE: January 16, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. 98 JAMES SOUTH (2022) INC. et al

BEFORE: JUSTICE STEELE, J.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
POLIAK, MAYA	KSV RESTRUCTURING INC	Maya@chaitons.com 416-218-1161

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
RABINOVITCH, NEIL STUART	GILLAM, MARCUS	Neil.rabinovitch@dentons.com 416-863-4656 (NOT PRESENT)
	MARSHALLZEHR GROUP INC.	
	98 JAMES SOUTH (2022) INC.	
	98 JAMES SOUTH (2022) LIMITED PARTNERSHIP	

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
SASSI, MONIQUE	Lawyer for the Purchaser (Hamilton 98 LP)	msassi@cassels.com

ENDORSEMENT OF JUSTICE STEELE:

[1] The Receiver seeks an order approving the proposed transaction pursuant to a Stalking Horse Agreement of Purchase and Sale dated November 1, 2024 between the Receiver and Vantage Acquisition Inc. and vesting title in the purchased assets in the assignee of Vantage, among other things.

[2] No one opposes the relief sought.

Analysis

Should the transaction be approved?

[3] I am satisfied that the proposed transaction should be approved.

[4] In *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), the Court of Appeal set out the factors for the Court to consider when determining whether to approve a proposed sale:

- a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- b. The efficacy and integrity of the process by which offers are obtained;
- c. Whether there has been unfairness in the working out of the process; and
- d. The interests of all parties.

[5] For the reasons set out at paras. 28 and 29 of the Receiver's factum, I am satisfied that the *Soundair* principles have been satisfied in respect of the sale process that was undertaken by the Receiver. Among other things, the process was conducted in accordance with the terms of the Sale Process Order and all potential purchasers were treated fairly and equally.

Should the Proposed Distribution be approved?

[6] I am satisfied that the proposed distribution should be approved.

[7] The Receiver proposes to make one or more distributions of the net proceeds from the sale transaction as partial payment of the balance owing by the debtors to Marshallzehr Group Inc. The Receiver proposes to make such distributions in accordance with the terms of the Receivership Order.

[8] The Receiver has received an independent legal opinion from Fasken that confirms that the first mortgage on the property held by Marshallzehr is valid and enforceable. The Receiver informed the court that despite having reached out to the second mortgagee, Hue Developments & Investments Canada Inc., the Receiver has not received any correspondence from the second mortgagee during these proceedings.

[9] The purchase price that will be paid pursuant to the transaction is less than the balance owing to MarshallZehr (as at January 2, 2025, approximately \$15.6 million).

Should the Court approve the Receiver's Second Report and activities?

[10] As is commonly done, the Receiver seeks court approval of its second report and the activities set out therein.

[11] The Court has the jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's reports: *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).

[12] I am satisfied that the activities of the Receiver set out in the Second Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers and should be approved.

Should the Receiver's Fees and Disbursements be approved?

[13] The Receiver seeks court approval of its fees and the fees of Chaitons and Fasken. In addition, the Receiver seeks approval of a fee accrual.

[14] In determining whether to approve a Receiver's (and its counsel's) accounts, the court considers the overall value contributed, taking into account the factors set out in *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at para. 33.

[15] The Receiver is of the view that its fees and those of its counsel are consistent with the rates charged by similar firms and are reasonable and appropriate. Fee affidavits have been filed.

[16] The Receiver is also of the view that the proposed fee accrual is reasonable and appropriate in the circumstances because it provides for the estimated fees to be incurred by the Receiver and its counsel and any anticipated ancillary costs.

[17] I am satisfied that it is appropriate to approve the fees and disbursements of the Receiver, Chaitons, and Fasken.

Receiver's Discharge

- [18] Following the completion of the transaction approved today, the Receiver will have completed most of its mandate, subject to certain minor administrative duties as set out in section 8.0(2) of the Second Report. Accordingly, the Receiver seeks a discharge following the filing of the discharge certificate with the court certifying that it has completing the remaining activities.
- [19] The proposed order contains standard provisions providing for the Receiver's release from liability upon its discharge (provided that there was no gross negligence or wilful misconduct).
- [20] Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the lower right quadrant of the page. The signature is written in a cursive style with a horizontal line through the middle of the letters.