



SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-24-00713245-00CL

DATE: February 27, 2025

REGISTRAR: Chidera Emeruem

NO. ON LIST: 2

TITLE OF PROCEEDING:

In Re: BALBOA INC., et al

BEFORE JUSTICE: OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Joseph Bellissimo Stephanie Fernandes	Court-appointed Monitor, KSV Restructuring	jbellissimo@cassels.com sfernandes@cassels.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
George Benchetrit David Im	Secured Lender Representative	george@chaitons.com dim@chaitons.com
Lauren Archibald	The Fuller Landau Group Inc.	lauren.archibald@nortonrosefulbright.com
Kyle Plunkett	Viscount Capital Inc.	kplunkett@airdberlis.com
Mario Forte	Unsecured Lender Representative	forte@gsnh.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Sieradzki Nathalie El-Zakhem	KSV Restructuring Inc.	dsieradzki@ksvadvisory.com nelzakhem@ksvadvisory.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Court-appointed Monitor seeks two orders today:
 - a. a credit bid approval and vesting order approving the Sale Agreements as set out in the 10th Report of the Monitor dated November 29, 2024, together with corollary relief; and
 - b. a credit bid/liquidation process order approving and authorizing the Secondary Credit Bid Process, providing mortgagees of the Applicants' Remaining Properties with a final option to submit credit bids for Remaining Properties, authorizing the Orderly Liquidation Plan, extending the stay to and including May 31, 2025, and approving the 11th Report and the activities of the Monitor described therein, together with the fees and disbursements of the Monitor and its counsel for the period from November 1, 2024 to January 31, 2025.
2. Defined terms in this Endorsement have the meaning given to them in the motion materials, including but not limited to the 11th Report of the Monitor dated February 20, 2025.
3. The Service List and all affected parties have received the motion materials. The Relief sought today is unopposed, and is supported by the Secured Lenders. For greater certainty, all affected first mortgagees have received notice of this motion.
4. The basis for the requested relief is fully set out in the materials. The Restructuring Term Sheet established deadlines of September 20, 2024 for first mortgagees and September 30, 2024 for second mortgagees, to submit credit bids for their respective Properties.
5. Ultimately, the Monitor received 323 credit bids representing 79% of the Properties. All but two of the credit bids were made by first mortgagees, with the remaining two made by second mortgagees.
6. 316 credit bid transactions closed on or around December 17, 2024, on which date the amount owing to Harbour of approximately \$15 million then secured by the DIP Lender's Charge was repaid in full. The replacement DIP funding was advanced by Viscount pursuant to the Viscount DIP Term Sheet.
7. Two of the credit bid transactions did not close as the mortgagees failed to pay their respective DIP Allocation with the result that, in accordance with the Credit Bid APA, those deposits were forfeited.
8. Five Properties that were subject to the Omnibus Credit Bid Vesting Order could not be completed for the reasons set out in the 11th Report with the result that the Monitor is now seeking the additional Credit Bid Vesting Order to permit credit bid transactions for those five Properties to Close.
9. With respect to the proposed Secondary Credit Bid Process and Orderly Liquidation Plan, the Monitor prepared an analysis comparing the Listing Agents' suggested list prices to the

mortgage and other secured debt on each of the Remaining Properties to assist the Monitor. Based on that Remaining Portfolio Analysis, the Monitor recommends that mortgagees should be provided with a further opportunity to submit a credit bid prior to listing the Remaining Properties For sale.

10. That Remaining Portfolio Analysis reflects that the Remaining Properties as a whole are significantly impaired, in that the aggregate suggested list prices total approximately \$18.1 million while the aggregate mortgage and other secured debt exceeds \$35 million, including the DIP Allocation.
11. There are 9 unencumbered Remaining Properties with an aggregate suggested listing price of approximately \$2.9 million; an additional 7 Remaining Properties that may have some equity in that the suggested list price for each exceeds the mortgage and other secured debt by approximately \$293,000 in the aggregate; and for all other 70 Remaining Properties, the secured debt materially exceeds the suggested list price.
12. Accordingly, the Monitor submits, and I accept that it is appropriate to permit mortgagees of those Remaining Properties one further and final opportunity to credit bid for the Remaining Property and to thereafter publicly list and sell the balance of Remaining Properties on an orderly basis.
13. This Court has the jurisdiction to approve the sale process in the absence of a plan pursuant to section 11 of the *CCAA*, provided that the court has considered the factors identified in *Nortel Networks Corp., Re*, 2009 CanLII 39492 (ON SC) at para. 48. I have considered those factors, together with the factors set out in section 36(3) and am satisfied that they are satisfied here.
14. The mechanics of the proposed Secondary Credit Bid Option are substantially the same as those used in the initial credit bid process set out in the Restructuring Term Sheet and approved by me on August 30, 2024, with one amendment. That is that purchasers must pay on closing an additional 25% reserve/escrow on the DIP Allocation as required under the Viscount DIP Term Sheet. That will be held in escrow by the Monitor pending further order of the Court or agreement among the Monitor, the DIP Lender, and the applicable purchaser.
15. Consistent with the Credit Bid APA used in the initial process, first mortgagees must provide a \$10,000 non-refundable deposit, together with any Secondary Credit Bid APA. Second mortgagees must submit a non-refundable deposit of \$10,000 plus an additional amount equal to 10% of the applicable first mortgage debt on the applicable Remaining Property to be paid on submission of a Secondary Credit Bid APA.
16. Second mortgagees must also pay in full on closing all amounts owing under any prior ranking mortgage on the Remaining Property other than a mortgage securing obligations under the Viscount DIP Term Sheet.

17. Also consistent with the Restructuring Term Sheet, any credit bid purchaser will not have a deficiency claim in connection with the liquidation of the Remaining Portfolio after completion of its Credit Bid APA transaction, without prejudice to other rights and remedies it may have including as against any personal guarantors of its debt or any non-Applicant parties or other recovery procedures.
18. There will be no purchase price adjustments, including in respect of deposits, rental arrears under leases and/or unpaid property taxes, utilities or expenses that may be outstanding on the closing date.
19. Finally, for Remaining Properties designated as Equity Properties, a credit bid purchaser will be required to pay the imputed equity value in the Remaining Property, which shall be determined on a future motion seeking approval of any secondary credit bid transactions submitted.
20. Remaining Properties not acquired under the proposed Secondary Credit Bid Process will be the subject of an orderly liquidation strategy developed by the Monitor working with CBRE Limited in its capacity as an existing SISP Advisor in these proceedings.
21. That proposed Orderly Liquidation Plan contemplates entering into listing agreements with the Listing Agents who are five reputable local agents in their respective markets recommended by CBRE. The Monitor will work with CBRE and the Listing Agents to determine the sequencing of listing of the Remaining Properties considering the markets, cash flow being generated by each property, if any, and their condition. The objective is to prevent the flooding of the market, such that only four or five properties will be listed concurrently in each market.
22. The Monitor will have the discretion in accordance with the Expanded Powers Order already granted to increase or decrease the list price for any property or accept any offer to purchase at any price, provided that, unless the Monitor obtains the prior consent of the DIP Lender, it shall not accept an offer that would result in net proceeds after deduction of reasonable sale commissions and property-specific legal costs that would be less than 125% of the DIP Allocation in respect of such property.
23. For all of these reasons, I am satisfied that the proposed process is appropriate in the challenging circumstances of this proceeding with the very significant number of properties to be monetized. I am also satisfied that no party, including but not limited to those parties who submitted bids in the initial process, will be prejudiced by the process sought to be approved today.
24. I am satisfied that the Monitor's Reports, activities and fees, together with the fees of its counsel, are appropriate, reasonable and should be approved. The activities are consistent with the original appointment order and have been accretive to the progress so far in this challenging proceeding. The fee affidavits set out the fees which are appropriate, reasonable, and commensurate to the activities undertaken.

25. Finally, I am satisfied that the stay of proceedings should be extended to and including May 31, 2025 to afford an opportunity to conduct and complete the Secondary Credit Bid Process and commence the process contemplated by the Orderly Liquidation Plan to list any Remaining Properties for sale.
26. The Monitor has been discharging, and continues to discharge, its duties in good faith and with due diligence. Based on the Cash Flow Forecast appended to the 11th Report, there is projected to be sufficient funding available to fund operations and costs through to the conclusion of the proposed extension period. I am satisfied that no creditor will be prejudiced by the proposed extension.
27. For all of these reasons, the motion is granted. Orders to go in the form signed by me today. They are effective immediately and without the necessity of issuing and entering.

Oliver J.