



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00716511-00CL

DATE: May 30, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION v. MAPLEVIEW DEVELOPMENTS LTD. et al
BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
ZWEIG, SEAN	KINGSETT MORTGAGE CORPORATION	zweigs@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
COX, SIMON	CON-DRAIN COMPANY (1983) LIMITED	scox@kmlaw.ca
	NORTH GATE FARMS LIMITED	
SOUTTER, ALEXANDER	AGGREGATED INVESTMENTS INC	asoutter@tgf.ca
	DUNSIRE HOMES INC.	
POLIAK, MAYA	MARSHALLZEHR GROUP INC.	maya@chaitons.com
STEPHENSON, MITCH	AVIVA INSURANCE COMPANY OF CANADA	mstephenson@fasken.com
MARAGNA, NICOLE	FOREMONT DRYWALL CONTRACTING	nmaragna@bianchipresta.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
WASSERMAN, MARC DICK, MARLEIGH ROSENBLAT, DAN	KSV RESTRUCTURING INC. (Receiver)	mwasserman@osler.com mdick@osler.com drosenblat@osler.com

TALLAT, MURTAZA GOLDSTEIN, NOAH		mtallat@ksvadvisory.com ngoldstein@ksvadvisory.com
ODETOYINBBO, TENI	QUALITY RUGS OF CANADA LIMITED/O/A QUALITY STERLING GROUP (<i>Construction Lien Claimant</i>)	totetoyinbo@cassels.com
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ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver, KSV Restructuring Inc., seeks the approval of a sales process and stalking horse agreement of purchase and sale.
- [2] KSV was appointed as the receiver and manager of certain real property (the “Real Property”) and all present and future assets and personal property belonging to Mapleview Developments Ltd. (“Mapleview”), Pace Mapleview Ltd. (“Pace”), and 2552741 Ontario Inc. used in connection with or arising from or out of the Real Property. Mapleview is a single purpose entity that owns the Real Property that is being developed. Pace is a residential real estate developer that was leading the development of the Urban North Townhomes project, a residential townhouse project that was being developed in Barrie, Ontario on the Real Property. Construction of the project has been halted as a result of these proceedings.
- [3] No party filed materials opposing the relief sought. At the motion, Marshallzehr Group Inc., the third and fourth mortgagee, made submissions regarding the duration of the sales process. Marshallzehr indicated that it was supportive of the stalking horse. However, Marshallzehr submits that interested parties should have 60 days (instead of 30) to conduct due diligence and determine whether to submit a non-binding letter of intent.
- [4] For the reasons set out below, the sales process and stalking horse APS are approved.

Should the Sales Process be approved?

- [5] The following factors based on those set out in *Royal Bank v. Soundair*, 1991 CanLII 2727 (ONCA) at para. 16, for approval of a proposed sale are applicable when considering a proposed sale process: *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, at para. 6:
- a. The fairness, transparency and integrity of the proposed process;
 - b. The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
 - c. Whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

- [6] I am satisfied that the proposed sale process is fair and transparent. Under the proposed process, the Receiver will be responsible for the marketing and sale of the property. The Receiver indicated that the marketing materials to solicit interest from parties potentially interested in pursuing a transaction would be disseminated on Monday, June 3, 2024. Interested parties will then be able to execute a non-disclosure agreement and access a data room containing diligence information. The interested parties have 30 days to conduct due diligence and determine whether to submit a non-binding LOI by the LOI Deadline (30 days from the date the marketing materials are disseminated). The interested bidders then have a further 15 days to submit a binding offer.
- [7] I am satisfied that the proposed sales process is also commercially reasonable and appropriate. It will allow the Receiver to test the market for the property in a commercially efficient manner. As noted above, Marshallzehr made submissions regarding the length of the diligence period arguing that it ought to be longer. Marshallzehr did not file any evidence. The only evidence before the Court is the Receiver's First Report, which states, in para. 5.3(1)(d): "The Receiver is of the view that the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers." I further note that the stalking horse purchaser indicated that it would not be willing to agree to an extension of the diligence time. Kingsett, the principal secured creditor of the debtors, noted that given the magnitude of the indebtedness in this case (over \$47.1 million to Kingsett alone), the per diem interest accruing is another factor weighing in favour of the timelines set out in the First Report. I am satisfied that the timelines proposed and supported by the Receiver, which has significant experience, are sufficient, given that, among other things, there is no evidence to the contrary.
- [8] The proposed sale process is designed to obtain the best price for the property. The Stalking Horse APS provides a "floor" and will protect the debtors from downside risk if a better bid is not identified. The bidding procedures contemplated under the sale process give other potential purchasers the opportunity to bid and for a transaction to be completed that is superior to the Stalking Horse APS. If there are multiple qualified bids that are received, the process contemplates an auction permitting bidders to submit higher or otherwise better offers for the property.
- [9] As noted by the Receiver, the commercial decisions of a receiver regarding a proposed sale process are afforded considerable deference by the Courts: *iSpan Systems LP*, 2023 ONSC 6212. It is not the Court's role to "micro-manage the intricacies of every step of a proposed sales process:" *iSpan Systems*, at para. 45.
- [10] The proposed sales process is approved.

Should the Court approve the Stalking Horse APS as the Stalking Horse Bid?

- [11] The stalking horse purchaser, Dunsire Homes Inc. ("Dunsire"), and the Receiver entered into the Stalking Horse APS on May 9, 2024. Dunsire, which is an affiliate of Aggregated Investments Inc. ("AI"), is the sole beneficial owner of the second-ranking mortgage charge registered on title to certain of the debtors' real property. Under the Stalking Horse APS Dunsire has agreed to act as a stalking horse bidder in respect of the sale process.
- [12] If selected, Dunsire will purchase from the Receiver substantially all of the debtors' and Receiver's interest in the Property (as defined in the First Report). In exchange, Dunsire will provide a purchase price that, among other things, will cover the amount outstanding under Kingsett's indebtedness, amounts outstanding in respect of specified priority payables, the outstanding amounts under the Receiver's

Charge and the Receiver's Borrowing Charge, and amounts outstanding under AI's mortgage and the Transferred Vector Charge. Dunsire will also assume certain liabilities.

[13] In considering a proposed stalking horse agreement, the Court will consider the factors set out above from *CCM Master: Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367, at para. 33. As set out in *Validus*, at para. 34, the following additional factors are also relevant in evaluating a stalking horse agreement:

- i. How did the stalking horse agreement arise?
- ii. What are the stability benefits?
- iii. Does the timing support approval?
- iv. Who supports or objects to the stalking horse agreement?
- v. What is the true cost of the stalking horse agreement? and
- vi. Is there an alternative?

[14] Osborne J., at para. 37, in *Validus*, after considering various authorities setting out factors for the Court to consider when contemplating a stalking horse bid stated:

These analyses distill, essentially, to this question: taking into account the support for and opposition to the terms of the proposed SISP and stalking horse agreement, while recognizing whether and how those parties supporting or opposing it are economically affected by the outcome, will the proposed process (including its stalking horse bid component and all other material terms), if approved and approved at this time, likely result in the best recovery on the assets being sold pursuant to a fair and transparent process?

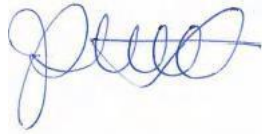
[15] I agree with the Receiver, at para. 30 of its factum, that the Stalking Horse APS ought to be approved because:

- a. The Stalking Horse APS will provide stability by setting the price floor on the debtors' assets and ensuring that the sale process will result in a successful sale.
- b. The timelines and terms of the proposed sale process are fair and reasonable. I discuss the issue of the timelines in more detail above. The Receiver notes that similar and shorter sale process timelines have been approved by the Court (*Validus*).
- c. The Stalking Horse APS is supported by the Receiver and Kingsett. MarshallZehr (other than the timelines issue) and AI also consent to the relief sought.

[16] The stalking horse proposal includes a break fee of \$1,200,000, which is payable if the Stalking Horse APS is not the successful bid. The Receiver's First Report notes that based on the Receiver's analysis of other break fees approved in past 3 years, the proposed break fee "is on the low end of the range of

reasonable bid protections incomparable insolvency proceedings.” The Receiver also states in the First Report that “the Break Fee is fair and reasonable in the circumstances and will not discourage interested parties from submitting offers in the Sale Process.”

[17] Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee" or similar, written in a cursive style.