



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00699432-00CL

DATE: MARCH 27, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. v. 2557386 ONTARIO INC et al.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other:

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ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver seeks the approval of a sale process, approval of the Receiver's activities as set out in its First Report, and the sealing of the confidential appendix to the Receiver's first report.
- [2] The Notice of Motion had also sought certain relief pertaining to the property municipally known as 2051 Vickery Drive, Oakville, Ontario. The Receiver asks that the relief sought pertaining to the Vickery Drive motion, in paras. 2 and 3 of the Notice of Motion, be adjourned *sine die*.
- [3] Although numerous observers were in attendance, no one opposed the relief sought by the Receiver.

Should the Court approve the Sale Process?

- [4] Under s. 243(1)(c) of the *Bankruptcy and Insolvency Act* the Court has jurisdiction to approve the sale process.
- [5] In *CCM Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750, at para. 6, the Court determined that the well-known criteria set out in *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 OR (3d) 1 (ONCA), at para. 16, also inform the determination of whether to approve a receiver's proposed sales process. *CCM* confirmed, at para. 6, that when considering a proposed sales and marketing process, the court is to assess:
 - a. The fairness, transparency and integrity of the proposed process;
 - b. The commercial efficacy of the proposed process in light of the specific circumstances; and
 - c. Whether the sales process will optimize the chances of securing the best possible price for the assets up for sale.
- [6] At para. 16 of its factum, the Receiver states that it recommends that the Court approve the sales process and the listing agreement with Colliers for the following reasons:
 - a. Collier's team has extensive experience selling undeveloped residential properties in the region;
 - b. Collier's commission structure is consistent with market rates;
 - c. Marshallzehr supports the engagement of Colliers and the sales process;
 - d. The process is designed to be a fair, open and transparent process intended to canvass the market broadly to obtain the best price;
 - e. The duration of the proposed process is sufficient to allow interested parties to perform diligence and submit offers. The Receiver can also amend timelines if necessary; and
 - f. The sale process includes procedures commonly used to sell real estate development projects.

[7] I am satisfied that the Court should approve the sale process.

Should the Confidential Appendix be Sealed?

[8] The Receiver seeks an order sealing ReMax Escarpment's analysis supporting the recommended listing price for the Vickery Property. The Receiver has entered into a sale transaction for the Vickery Property and is concerned that if the transaction with the existing purchaser does not close it would be harmful to the re-listing of the property to have this information available.

[9] The sealing order sought is time limited (pending the closing of the sale or further court order) and limited in scope (only applies to the confidential appendix).

[10] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. The Court also has inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.* (2010), 100 O.R. (3d) 510 (ONSC), at para. 34.

[11] I agree with the Receiver that the proposed sealing of the confidential appendix is appropriate in the circumstances. The confidential appendix contains confidential and commercially sensitive information regarding the Vickery Property. If the proposed sale to the purchaser does not close, the disclosure of the information in the appendix would be harmful and prejudicial to the receivership estate and stakeholders. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. As a matter of proportionality, the benefits of keeping this one appendix sealed for a limited period of time so as not to prejudice the sale of the Vickery Property outweighs the negative effects from temporarily restricting public access to a limited amount of information.

[12] Having considered the test set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2022 SCC 41, at para. 45, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25, I am satisfied that it is appropriate to grant the requested sealing order.

[13] The Receiver is directed to provide the sealed confidential appendix to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendix can be physically sealed.

[14] Order attached.

[15] The relief sought pertaining to Vickery Drive, in paras. 2 and 3 of the Notice of Motion, is adjourned *sine die*.

