



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-710267-00CL

DATE: July 15, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: MCAP FINANCIAL CORPORATION v. VANDYK-BACKYARD KINGS MILL LIMITED et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

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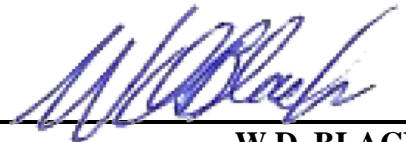
For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE BLACK:

- [1] The receiver brought this motion seeking an approval and vesting order (“AVO”), for a proposed transaction (the “Transaction”), to sell the Property (as defined in the receiver’s materials) to PAD Investments Ltd. (the “Purchaser”); an order appointing the receiver as receiver over the Beneficial Interest (again as defined) to permit the Transaction to proceed; and an order sealing commercially sensitive documents until the closing of the Transaction.
- [2] The receiver also seeks an Ancillary Matters and Distribution Order (the “Distribution Order”) to, among other things, direct the receiver to make the distribution to the applicant MCAP Financial Corporation (“MCAP”), and to approve the activities and reports of the receiver, as well as its fees and disbursements and those of its counsel.
- [3] The receiver asserts that “the Transaction is the culmination of a successful sale process” and “represents the most certain, highest recovery available to stakeholders” and that as such it “should be approved by the Court.”
- [4] I find that the receiver’s assertion is apt.
- [5] The respondent is part of a broader group of real estate developers known as the “Vandyk Group.” On December 11, 2023, this court issued a receivership order appointing the receiver as both receiver and manager over the Property, and construction lien trustee.
- [6] On March 8, 2024, this court issued an order approving a sale process (the “Sale Process”), for the Property and for property of other entities within the Vandyk Group (a number of which had become subject to receivership proceedings).
- [7] As set out above, the receiver represents that the Transaction is a favourable one, and the confidential materials provided to me under separate cover do seem to reflect a fair and substantial price for the Property.
- [8] Consistent with that impression, there is no opposition expressed to the orders sought by the receiver before me.
- [9] I was advised that, with respect to certain concerns expressed by lien claimants, certain adjustments were made to the orders, lowering the amount payable from the proceeds of the transaction to MCAP by \$1.9 million, and establishing procedures whereby lien claimants may pursue claims.
- [10] There is also a protocol being developed, led by Tarion, to ensure that putative purchasers are able to assert and pursue claims relative to deposits.
- [11] Within the context of these arrangements with respect to lien claims and deposits, there are likely to be, or may be, certain priority disputes.
- [12] That said, no party in attendance appears to question the providence and benefits of the Transaction, nor the receiver’s recommendation that the court approve it.
- [13] It appears to me, based on this evidence in the record, that the proposed Transaction meets the well-established criteria in the Court of Appeal for Ontario’s decision in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA).

- [14] That is, it appears that the Sale Process was robust and attracted considerable interest and more than one potential purchaser, that thereby the receiver's efforts were sufficient to obtain the best price, that the Sale Process was conceived and carried out with integrity and efficacy, that there is no evidence of unfairness, and that the process and the result maximize the benefit for all stakeholders.
- [15] Subject to the protection of claims for deposits, including the protocol mechanism being developed in that regard, I also accept that the receiver ought to have the ability to disclaim pre-sale homebuyer contracts, and I grant it the authority it seeks in that regard. I find that the proposed approach here meets the criteria set out in *Fojay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 1013.
- [16] I also accept that, in order for the Transaction to proceed, it is necessary for the receiver to assume the Beneficial Interest in the real property held by Vandyk Humberside, so that the receiver may in turn convey that beneficial interest to the Purchaser. In the circumstances, I find that it is just and convenient to bestow this assumption of the Beneficial Interest, and that the Transaction cannot proceed without this measure.
- [17] Finally, I am persuaded that, pursuant to the Supreme Court of Canada's decision in *Sierra Club* as recently recast in *Sherman Estate v. Donovan*, 2021 SCC 25, the sealing order sought by the receiver is appropriate. The information sought to be protected until the closing of the Transaction is clearly commercially sensitive such that the sealing order is appropriate to protect it (inasmuch as a publication of these details could adversely impact the future marketability of the Property if the Transaction does not close). The temporary sealing of the information is also proportionate to the objectives here – including maximizing stakeholder value.
- [18] I also conclude that, with the modifications agreed between and among the receiver, MCAP and the lien holders, the Distribution Order is appropriate; it is to be made pursuant to a valid and enforceable security interest, and would achieve savings of interest payments while leaving sufficient liquidity.
- [19] I find that the activities of the receiver and its counsel, including the reports of the receiver, have been reasonable and appropriate, and I approve those activities and reports along with the fees sought by the receiver and its counsel, which seem reasonable and in keeping with the level of activity.
- [20] In sum, in the circumstances, I grant the AVO and the Distribution Order.



W.D. BLACK J.

DATE: JULY 15, 2024