



SUPERIOR COURT OF JUSTICE

**COMMERCIAL ENDORSEMENT**

COURT FILE NO.: BK-22-00299040-0031      DATE: 9 February 2023

NO. ON LIST: 3

TITLE OF PROCEEDING:                      **BANKRUPTCY OF BRAMALEA INC**

BEFORE JUSTICE:    **KIMMEL**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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**For Other, Self-Represented:**

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## **ENDORSEMENT OF JUSTICE KIMMEL:**

1. The history of this matter is described in the endorsement of Osborne J. dated November 22, 2022, at which time a sales process (the "Sales Process") and Stalking Horse Agreement that preceded today's motion were approved ("Sales Process Order"). I need not repeat that history, but note that I am aware of it.
2. Defined terms in this Endorsement have the meaning given to them in the Trustee's Notice of Motion and/or the Trustee's Second Report.
3. MNP Ltd. moves in its capacity as licensed insolvency trustee of the bankruptcy estate of Bramalea Inc. (formerly "Bramalea Limited" and "Bramalea Consolidated Developments Limited") for an order approving the Trustee's second report dated January 30, 2023 (the "Second Report") detailing, among other things, its activities in connection with an agreement of purchase and sale dated January 6, 2023, as amended (the "Purchase Agreement"), made between the Trustee, as vendor, and 1000395283 Ontario Inc., as purchaser, (the "Purchaser") and for an order ("AVO"):
  - a. approving the Purchase Agreement and authorizing the Trustee to complete the transaction contemplated thereby (the "Transaction"); and
  - b. vesting in the Purchaser, on completion of the Transaction, all of the Trustee's and Bramalea's rights, title and interests in and to the Railway Lands free and clear of all encumbrances, except for specified assumed liabilities and permitted encumbrances identified in the Purchase Agreement;
4. The Trustee also seeks an order (the "Administrative Order"):
  - a. Approving the Second Report and the Trustee's activities described therein;
  - b. Approval of the payment of the Expense Reimbursement and Break Fee pursuant to the Stalking Horse Agreement;
  - c. Sealing the Confidential Appendices, pending completion of the Transaction or further order of the Court; and
  - d. Approving the fees and disbursements of the Trustee and of its counsel, Loopstra Nixon LLP.

### AVO

5. Conway J. made a previous order on June 14, 2022 that was restated on October 4, 2022 approving a sales process for certain "Remnant Lands" and a conditional AVO in favour of the Purchaser of those lands. Today's motion seeks essentially the same relief, for an AVO, in respect of the Transaction which involves other Real Property that has now been conditionally sold pursuant to the Sales Process Order.
6. The Second Report details the Trustee's compliance with the Sales Process Order. The Sales Process was robust, resulting in multiple bids, a multi-round auction and an eventual Transaction at a price that significantly exceeds the sale price under the Stalking Horse Agreement.
7. I am satisfied that the sales process that was undertaken by the receiver meets the requirements of the principles *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) and that the proposed AVO in respect of the subject Real Property should be approved. The Trustee has run a sales process and canvassed the market in accordance with the court's previous orders in that regard. The fairness, efficacy and integrity of the process has been established. This is reinforced by the fact that no one is opposing the orders sought on this motion.
8. There is a unique provision contained in paragraph 3 of the AVO, that was included in the Amended and Restated Order signed by Conway J. in respect of the last AVO. It is required because of the corporate history set out in the record that was before Her Honour and has been provided to me today, explaining that Bramalea Inc. (the bankrupt) is the successor to the registered owners of the lands in question. I am satisfied that it is appropriate to include this provision in the AVO.

9. There are some other small additions to the model form of Order that are the result of the historic nature of this bankruptcy and the lapse of time, each of which were included in the previous AVO and are appropriate in the circumstances of this case.

Activities and Fee Approval and Sealing Order – Administrative Order

10. The fees claimed for the Trustee and its counsel are supported by affidavits and reflect their activities and work performed. The professional fees for which approval is sought are commensurate with the tasks performed and I find them to be fair, reasonable and justified in the circumstances. See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 45.
11. The Reimbursement Expenses and Break Fee are expressly provided for under the Stalking Horse Agreement previously approved by Osborne J. The November 22, 2022 endorsement makes specific reference to these fees that are part of the approved Stalking Horse Agreement. The amounts that the Trustee seeks approval to pay are the amounts expressly provided for in the Stalking Horse Agreement. It is appropriate that the payment of these amounts now be approved, since that agreement served its purpose in eliciting an even better Transaction.
12. The requested partial sealing order is limited in its scope (only specifically identified confidential exhibits) and in time (until the Transaction is completed). It is necessary to protect commercially sensitive information that could have negative impacts if this Transaction is not completed and further efforts to sell the subject Real Property have to be undertaken.
13. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the property, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved sale transaction. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
14. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with the approval and vesting orders.
15. Counsel for the Trustee is directed to ensure that the sealed confidential exhibits are provided 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 exhibits can be physically sealed.
16. Orders (the AVO and Administrative Order) to go in the forms signed by me today.



KIMMEL J.