



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-23-02961172-0031

DATE: July 20, 2023

REGISTRAR: L. Lewis

NO. ON LIST: 4

TITLE OF PROCEEDING: Hunter Boot (Canada) Inc

BEFORE JUSTICE: Justice Steele

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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

Name of Person Appearing	Name of Party	Contact Info
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Name of Person Appearing	Name of Party	Contact Info
Andrew Harmes	Counsel for Authentic Brands Group	aharmes@goodmans.ca
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ENDORSEMENT OF JUSTICE STEELE:

1. MNP LTD in its capacity as trustee in the bankruptcy for Hunter Boot (Canada) Inc. brings a motion seeking (i) the approval of a sale transaction; (ii) approving the Trustee's Report; and (iii) sealing the confidential appendices to the Report.
2. On June 2, 2023, HBC's parent company, Hunter Boot Limited, was placed in administration, and Alex Partners UK LLP was appointed the Administrator. The Administrator sold HBL's intellectual property. The Administrator engaged in further discussions with the Purchaser regarding the sale of the assets of various subsidiaries of HBL, including HBC. The Purchaser of the intellectual property agreed to a Put Option Deed, whereby the Purchaser would be required, if requested, to buy HBC's stock at the price that was negotiated for the sale of the stock of HBL's other subsidiaries.
3. The Trustee has until August 1, 2023 to exercise its right under the Put Option Deed.
4. There is no opposition to the orders sought.

Sale Approval

5. The Trustee seeks the Court's approval of the exercise of the Put Option Deed to sell HBC's stock to the Purchaser on the terms negotiated by Alix Partners.
6. The Court of Appeal in *Royal Bank of Canada v. Soundair Corporation*, 1991 CanLII 2727 (Ont. C.A.), at para. 16, set out the criteria to be applied when considering the approval of a sale by a receiver:
 - a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - b. Whether the interests of all parties have been considered;
 - c. The efficacy and integrity of the process by which offers are obtained; and
 - d. Whether there has been unfairness in the workout of the process.
7. Courts have applied the *Soundair* principles in the context of bankruptcy: *Graham Mining Ltd., Re*, 2001 CanLII 28466 (ON SC), at para. 56; *Wagman, Re*, 2006 CanLII 12435 (ON SC).
8. I am satisfied that the *Soundair* principles have been met:
 - a. Efforts made to get the best price: Alix Partners were first retained by HBL in 2020 to conduct a sales process, which did not proceed. In 2023 Alix Partners undertook a sales process of the business and assets of HBL and its subsidiaries, which resulted in the sale of HBL's intellectual property. Alix Partners and the Purchaser of the intellectual property negotiated a Put Option Deed for HBC, which the Trustee now seeks to approve. The Trustee provided the Court with two appraisals showing the expected realization from the Put Option Deed (one of the appraisals was obtained before the intellectual property and ecommerce site were sold, and therefore is of limited reliability). The Trustee is confident

that the best price is in the Put Option Deed because it relies upon a robust process that was already in place and negotiated between the parent company (and Alix Partners) and the Purchaser.

- b. Interests of all parties have been taken into consideration: The inspectors support the transaction. There are no employees. The Purchaser has bargained at some length and expense to negotiate the Put Option Deed.
 - c. Process obtained with efficacy and integrity: As noted above, an extensive sales process was conducted by Alix Partners, which process culminated in the Put Option Deed. It would not be efficient for the Trustee to repeat a sales process that was already completed by Alix Partners.
 - d. No unfairness in the process: The assets of HBL and all members of the group, including HBC were extensively marketed by Alix Partners. Any interested parties had the opportunity to bid in that process.
9. I am satisfied that the *Soundair* criteria have been met and the proposed sale should be approved.

Sealing Order

10. The Trustee seeks a sealing order in respect of Confidential Appendices 1, 2, and 3. The Trustee asks that they be sealed until the Trustee has filed its certificate certifying that the transaction has been completed, or further order of the Court. The Confidential Appendices contain the appraisals and the unredacted Put Option Deed with the Purchaser. The Trustee notes that the information is commercially sensitive and would prejudice the parties if the information became public prior to the sale of the properties.
11. 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.
12. The Supreme Court of Canada, in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38, articulated the test applicable when determining whether a sealing order ought to be granted:

The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

1. Court openness poses a serious risk to an important public interest;
2. The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
3. As a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all three of these prerequisites have been met can a discretionary limit on openness – for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order – properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).

13. The requested sealing order is limited in scope (only the Confidential Appendices) and in time (until the sale transactions are completed or further Court order). The proposed sealing order balances the open Court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative effects. Importantly, the sealing order will preserve the integrity of the sale process by keeping the appraisal values and deal details confidential until the transaction is complete. This greatly outweighs any negative effect that may result from temporarily restricting public access to a limited amount of information.
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 41 requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25.
15. The Trustee is directed to provide the sealed Confidential Appendices 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 appendices can be physically sealed.
16. Order to go in the form signed by me today.

A handwritten signature in blue ink, appearing to be 'J. P. [unclear]', is located to the right of the text for item 16.