



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00698447-00CL DATE: 29 May 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: Canadian Western Bank v. Index Holding Group Inc. et al.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jeremy Bornstein	For Canadian Western Bank	jbornstein@cassels.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Lisa S. Corne	For the Receiver, MNP Limited	lcorne@dickinson-wright.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. The court appointed receiver, MNP Ltd. (the "Receiver"), scheduled a 15 minute appointment seeking the following relief by way of a draft approval and vesting order ("AVO") submitted to the court:
 - a. approving the First Report of the Receiver dated May 23, 2023 (the "First Report") and the activities and recommendations of the Receiver described therein;
 - b. approving the Sale Process outlined in the First Report and authorizing the Receiver to carry out the Sales Process described in the First Report;
 - c. approving the sale of the property owned by 421 Wharncliffe Ltd. (the "Debtor") known municipally as 421 Wharncliffe Road South, London, Ontario, and legally described as, PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 if any, S/T 583284 if any; London/Westminster (PIN 08398-0360 (LT)) (the "421 Property"), on the terms set out in the Agreement of Purchase and Sale dated March 29, 2023 between the Debtor and Muhammad Saleem (in trust for a corporation to be formed, the "Purchaser"), as amended by the First Amendment to Agreement of Purchase and Sale dated May 15, 2023 between the Purchaser and Receiver (the "Sale Transaction"), and authorizing the Receiver to complete the Sale Transaction and vesting the right, title and interest in the Property in the Purchaser upon the delivery of the Receiver's certificate.
2. No factum or Aide Memoire was filed and the court did not have time to deal with all of the relief sought in the 15 minutes that was booked, with a full docket for the balance of the day.

AVO for the Sale of the 421 Property

3. The First Report amply supports the granting of the approval of the Sale Transaction, which was entered into by one of the Debtors before the Receiver was appointed. Since being appointed, the Receiver reviewed the 421 APA that had been entered into on March 20, 2023 (the "APA") and negotiated an amending agreement that increased the deposit from the purchaser, confirmed the purchaser was waiving its conditions to closing and introduced as a condition the court's approval of the APA.
4. The applicant, Canadian Western Bank ("CWB") is the only creditor with a registered security interest over the 421 Property and it consents to the Sale Transaction and the AVO sought in respect thereto. The Receiver believes that CWB is facing a significant shortfall. The service list was served with notice of this motion on May 24, 2023 and no recipient indicated any objection.
5. The only other party who appears on the title abstract to have a potential interest in the 421 Property is the city of London that has a registered open work order. The City of London has advised counsel for the Receiver that it is in the process of having that work order closed and removed from title. The First Report indicates that the work (demolition) has been completed and the 421 Property is a vacant lot.
6. The Receiver is recommending that the court approve this Sale Transaction and grant the proposed AVO. The specific reasons that support the Receiver's recommendation are as follows:
 - a. the Debtors negotiated the 421 APA and are in support of its completion;
 - b. the 421 Property was listed for sale by 421 Wharncliffe prior to the Receiver's appointment; and
 - c. the Debtors' secured debt to CWB is currently in excess of approximately \$7.5 million. Based on the Receiver's initial review of the potential realizations from the Debtors' assets and operations, CWB will likely suffer a significant shortfall on its security. CWB supports completion of the Transaction.
7. There is no reason to believe that any better price could be obtained for the 421 Property than that which was negotiated at arm's length prior to the Receiver's appointment. The existence of a pre-existing APA is an important consideration in these circumstances, not only as to the providence of the sale price but also in terms of the usual process considerations that a court might otherwise be concerned about, having regard to the factors in *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (CA). Although it was not marketed and sold by the Receiver, in these particular circumstances the court is

satisfied of the fairness, efficacy and integrity of the process by which the Receiver has come to recommend the Sale Transaction.

The Receiver's Proposed Sale Process

8. The receiver has developed a proposed sale process to market and sell the remainder of the Debtors' property, including various Popeye's and Denny's franchises. This proposed sale process will be targeted and the Receiver hopes to conclude it on an expedited timeline. Unfortunately, with the time available this could not be fully canvassed by the court.
9. The court's jurisdiction to approve the proposed SISP comes under section 243(1)(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). The reasonableness and adequacy of any sale process proposed by a court-appointed receiver must be assessed in light of *Soundair* factors that the court is to take into account when considering the approval of a proposed sale. That makes good sense given that that *Soundair* principles are process oriented. In approving a Sale Process, the court will consider factors such as:
 - a. the fairness, transparency, and integrity of the proposed sale process;
 - b. the commercial efficacy of the proposed sale 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.

See *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 5338, at paras. 7- 8

10. The balance of the Receiver's motion for the approval of the proposed Sales Process described in the First Report is adjourned and may be brought back on another day when there is sufficient time to deal with it and to consider the general requirements that must be taken into account.

Order and Disposition

11. At the court's request, the paragraph of the AVO that addresses the approval of the First Report and the activities of the Receiver described therein has now been supplemented by the required qualifying language limiting reliance upon the court's approval to the Receiver alone.
12. The revised AVO may issue in the form signed by me today with immediate effect.



KIMMEL J.