

CITATION: Firepower Debt GP Inc. v. TheRedPin, Inc. 2020 ONSC 3709
COURT FILE NO.: CV-18-599644CL
DATE: 20200615

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Firepower Debt GP Inc., as Agent, Applicant

AND:

TheRedPin, Inc. and TheRedPin.com Realty Inc., Respondents

BEFORE: Penny J.

COUNSEL: *Harry Fogul* for the Receiver, MNP Ltd.

Harvey Chaiton for Firepower Debt GP Inc.

A. Kauffman for Trilogy Growth Fund LP

J. Goldblatt and I. Graham for the Agents

HEARD: In Writing

COSTS CLARIFICATION ENDORSEMENT

[1] In 2018, the Receiver of TRP Inc. and TRP Realty Inc. (TRP) brought a motion seeking the advice and direction of the Court about whether certain third-party commissions owed to the Agents which were to be collected by the Receiver (in the amount of about \$3.7 million) were held in trust for the benefit of TRP Agents.

[2] In Reasons dated November 30, 2018 and reported at 2018 ONSC 7182, I held that the commissions were not subject to a trust but were the property of TRP and therefore subject to the secured creditors' claim. This decision was upheld by the Court of Appeal for Ontario in a decision reported at 2019 ONCA 903.

[3] On the question of costs, I found that it was through no fault of the Agents but only the result of TRP's insolvency that the unpaid commissions would accrue to the benefit of the secured creditors. As acknowledged by the Receiver in bringing its motion for the advice and direction of the Court, and as found by me in my Reasons, it was necessary for this issue to be resolved for the benefit of all stakeholders. The Agents participated in the Receiver's motion responsibly and pursued their claims in a structured and orderly way.

[4] As a result, I awarded costs to the Agents in the amount of \$45,000 to be "paid out of the assets of TRP Realty" and awarded no costs against the Agents.

[5] A dispute has arisen over by whom and from where the awarded costs are to be paid. The dispute arises because the amount owed to the secured creditors exceeds the realizations made by

the Receiver. If my cost award is treated simply as an unsecured obligation of TRP to a creditor, no costs will be paid because unsecured creditors will never receive anything in the TRP insolvency. The secured creditors submit that this is simply a consequence of my cost award of November 30, 2018 that the costs be “paid out of the assets of TRP Realty.” The Agents submit that this was not the intent of the cost award and ask me to vary that award to provide that the secured creditors pay the Agents’ costs of \$45,000.

[6] I do not accept either of these positions.

[7] This was the Receiver’s motion, brought to solve a problem that needed to be solved in the realization and distribution of TRP’s assets. Although TRP had not been placed into bankruptcy at the time of the motion, it was clear that the secured creditors would suffer a shortfall regardless of the outcome of the trust issue. In other words, there was never going to be any payment of unsecured obligations of TRP. The intent of my costs award was not that it be a meaningless gesture.

[8] In ruling on the payment of \$45,000 for the Agents’ costs, and ordering that they be paid from TRP’s assets, it was my intention that they be paid more or less immediately (the default in R. 57.03 for costs fixed on a motion is 30 days) *as if they were costs of the receivership*; that is, in priority to any distribution to the secured creditors out of net realizations.

[9] My clarification, therefore, is to order the costs of \$45,000 to be paid to Mr. Goldblatt’s firm in trust as part of the Receiver’s costs of realization. These costs shall be paid, therefore, from the realized assets of TRP in priority to any claim by or distribution to the secured creditors.



Penny J.

Date: June 15,2020