



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00713287-00CL

DATE: August 15, 2024

NO. ON LIST: 6

TITLE OF PROCEEDING: AFC MORTGAGE ADMINISTRATION INC. v. SUNRISE ACQUISITIONS (ELMVALE) INC., SAJJAD HUSSAIN, MAHVESH HUSSAIN, MUZAMMIL KODWAVI and SAFINA KODWAVI

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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Paul Mand	Lawyers for the Applicant	pmand@mandlaw.com
Joseph Blinick Joshua Foster	Lawyers for KSV Restructuring Inc. the Court Appointed Receiver in Court File CV-21-00663051-00CL and the 2nd Mortgagee on 74 Yonge Street	blinickj@bennettjones.com fosterj@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jason Wadden Joshua Hearn	Lawyers for the Respondents	jwadden@tyrllp.com jhearn@tyrllp.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Neal Howard Roth	Lawyer for the Mason's Masonry Supply Ltd., Construction Lien claimant on 9 Cicada Court	nealroth@on.aibn.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicant dated August 7, 2024.**
- [2] The Receiver brings this motion seeking three orders: (i) an AVO approving sale transactions in respect of the Cicada and Abbruzze Properties; (ii) a Sale Procedure Order approving a sale procedure, listing agreement, and Stalking Horse Agreement in respect of the Elmvale Property; and (iii) an Ancillary Relief Order approving fees and activities, and sealing confidential appendices.
- [3] The Respondents filed materials and a factum opposing the relief with respect to the Stalking Horse Agreement and the sale of the Cicada and Abbruzze Properties. I heard submissions today, and said I was dismissing the objections of the Respondents and granting the orders.
- [4] With respect to the Stalking Horse Agreement, the Receiver explains the background in its First Report and the affidavit of Mr. Rosen sworn August 15, 2024. The Receiver originally considered proceeding by way of a listing and bid process. It was then approached by an interested party and entered into lengthy negotiations with that party over the terms of the stalking horse agreement. The Receiver considered the price in the Stalking Horse Agreement and whether it was too low. The Receiver's evidence is that based on discussions with CBRE and the significant uncertainty currently in the marketplace, it believes that the purchase price is reasonable. It entered into the Stalking Horse Agreement on June 5, 2024.
- [5] After the Receiver entered into the Stalking Horse Agreement, the Respondents put forth a Letter of Intent dated July 24, 2024 for a higher purchase price (the "**Other Bidder**"). The Receiver responded that it had already entered into the Stalking Horse Agreement and that the Other Bidder could participate in the sale process.
- [6] The Respondents submit that the Other Bidder should replace the Stalking Horse Bidder. They are critical of the way that the Receiver engaged with the Stalking Horse Bidder and say the Receiver did not act with sufficient urgency. They further argue that the Stalking Horse Agreement will send the wrong message to the market and ultimately yield a lower price for the Elmvale Property. They argue that the Stalking Horse Agreement is now stale and does not reflect the state of the market.
- [7] I do not accept these arguments. The Receiver, as a court-appointed officer, has conducted its own assessment of the market and engaged and negotiated with the Stalking Horse Bidder. The Respondents do not dictate the process and the Receiver is not bound to accept their views on pricing, stalking horse bidder, or the optimal way to market the property. I

am satisfied that the Receiver's assessment that the Stalking Horse Agreement is the best way to move forward should be accepted in this case. If the Other Bidder wishes to bid on the Elmvale Properties, it is free to do so. The market will speak. In addition, the Receiver has its duties as a court officer and will have to satisfy the court that the *Soundair* principles have been met when it seeks approval of any transaction arising out of the process.

[8] The break fee in the Stalking Horse Agreement is in line with others approved by this court (2.5%). The timelines in the Sale Process Order are acceptable (and the dates have been modified by the Receiver to respond to concerns raised by other stakeholders). I approve the Sale Procedure Order.

[9] With respect to the sale of the Cicada and Abbruzze Properties, these are unoccupied residential properties that cross collateralize the Second Elmvale Mortgage. The Respondents wish to defer the sale of these properties until after the Elmvale Property is sold. They say that it may be unnecessary to sell these properties once Elmvale is sold and that they can top up the sale price to pay all amounts owing to the Applicant.

[10] In my view, this is essentially the same argument that Justice Black considered and rejected in his endorsements of February 29, 2024 and April 5, 2024 when he granted the receivership order. He stated in the April 5, 2024 endorsement:

...the Debtors seek to modify the proposed order - closely based on the model order - to effectively carve out the Collateral Properties (as defined in my endorsement for the February 29 hearing), and to keep them to a significant extent within the ongoing control of the individual Debtors.

Despite the able submissions of Mr. Wadden, I am not prepared to approve an order with the modifications he urges.

The Debtors made submissions before me on February 29, effectively seeking that same relief, and, in particular at paragraphs 83-86 of my endorsement for that hearing, I declined to accept those submissions.

In my view, it is in fact desirable here, in all of the circumstances outlined in my endorsement for the February 29 hearing, that the Receiver have control over all properties for which it was appointed.

[11] Again, the Respondents are seeking to carve out or defer the sale of the two properties, essentially seeking to wrest the control over the sale process that this court granted to the Receiver. There is no basis for them to do so.

[12] The Receiver has conducted the sale process for these properties in compliance with the court order. It has met the *Soundair* principles. In particular, I accept its view that the

market was sufficiently canvassed and that each APS represents the highest and best offer for the Real Property in the circumstances. I approve the AVOs for these properties.

- [13] The materials contain a sealing order for the Confidential Appendices pending the closing of the transactions contemplated by the purchase agreements. I am satisfied that the requested sealing order for the Confidential Appendices meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets if the properties have to be remarketed. To the extent that any responding materials inadvertently included any confidential information from the Confidential Appendices, Mr. Wadden has undertaken to address and refile those materials. **I direct counsel for the Receiver to file a hard copy of the Confidential Appendices with the Commercial List office in a sealed envelope with a copy of the AVO and this Endorsement.**
- [14] I have signed the three orders today. Orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.
- [15] Counsel for the Respondents advised that his clients will be seeking a stay of my orders pending appeal and has asked that the Receiver and its counsel not do anything to make their request moot in the meantime. It is my expectation that nothing be done to undermine any stay and/or appeal rights that the Respondents may have with respect to my decision today.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.