

Court File Number: CV-21- 00660056-00CL
CV-21-00667752-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

DORR CAPITAL CORPORATION et al.

Applicants

AND

MILL STREET VENTURES GP LTD.

Respondent

Case Management Yes No by Judge: L.A. Pattillo J.

Counsel	Telephone No:	Email/Facsimile No:
See Attached App. "A"		

ENDORSEMENT

Date Heard: SEPTEMBER 9, 2021

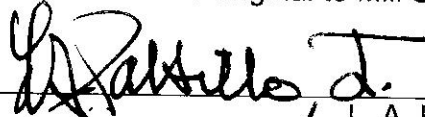
1. On April 20, 2021, I appointed Rosen Goldberg Inc. as non-possessory interim receiver of the respondent's, Mill Street Ventures GP Inc. (Mill Street), property at 305 Mill Street in Angus, Ontario pursuant to s. 47 of the BIA. The Property was being developed into a retail plaza by the respondent who was in default to its first ranking secured creditor, DUCA Financial Services Credit Union Ltd. (DUCA), who holds a first mortgage as well as other security. As a result, construction had ground to a halt.
2. The applicants also financed Mill Street's construction and hold security subordinate to DUCA's. Its loans were also in default. Their application was commenced to preempt DUCA's intention to appoint a receiver in order to complete the construction of Phase 1 of the development. DUCA consented to the application on the agreement by the applicants, as reflected in my endorsement, that the appointment order was without prejudice to DUCA and its security and its rights thereunder including, among other things, its right to bring a motion to lift the stay after 30 days and, if DUCA is granted leave to lift the stay, to appoint a receiver, the applicants would not oppose MSI Spergel Inc. (Spergel) being appointed as receiver.

3. The interim receiver's mandate was to complete the construction of Phase 1 which consists of a gas station, convenience store and three buildings to be occupied by fast food restaurants and a coffee shop pursuant to long term leases. In its first report dated May 11, 2021, the interim receiver noted that at the date of the appointment, Phase 1 was nearly complete. The appointment order authorized the interim receiver, among other things, to borrow up to \$2 million in DIP financing to complete the construction. It expected to complete construction by the end of May.
4. The DIP lender is C&K Mortgage Services Inc., carrying on business as Rescom Capital (Rescom).
5. Subsequently, delays resulting from various issues has resulted in Phase 1 still not being completed. In the fifth report dated September 7, 2021, the interim receiver estimates 4 weeks to complete which does not include the gas station or convenience store. Further, it estimates the cost to complete the construction to be an additional \$300,000 over and above the \$2 million authorized.
6. In early August, I was advised that the intention of the Applicants was to expand the interim receivership to a full receivership, and they expected to pay out DUCA by August 23rd. As DUCA indicated that in the absence of being paid out, it wanted to bring an application to appoint its receiver and Mill Street was not sure of its position, I set September 9, 2021, to decide the matter and August 23, 2021 for a status update.
7. On August 20, 2021, the applicants commenced a motion to amend the appointment order to convert and expand the status and mandate of the interim receiver to a receiver and manager appointed pursuant to s. 243 of the BIA and s.101 of the *Courts of Justice Act*. The material indicated that Rescom was to pay out DUCA conditional, among other things, on the motion being granted.
8. On August 23, 2021, having still not been paid out, DUCA indicated that it intended to commence an application to appoint its receiver. Mill Street was not sure of its position. A timetable was set for materials in advance of September 9, 2021.
9. On August 26, 2021, DUCA commenced its application (Ct. file CV-21-00667752-00CL) seeking leave to lift the stay arising from my appointment order and appointing Spergel as receiver of Mill Street.
10. In light of DUCA's application and their undertaking not to oppose, the applicants relinquished carriage of their motion to convert the interim receivership to Rescom. They support Rescom's conversion motion.
11. Mill Street filed an affidavit from Blake Larsen, its sole officer and director, which opposed both applications for receivership. Mr. Larsen indicated that Mill Street had entered into conditional agreements to sell both Phase 1 and 2, subject to approval of the court and that the monies from the sales would be sufficient to pay off each of DUCA, the applicants and Rescom. Mr. Larsen indicated he was attempting to get financing to complete Phase 1 and asked for time to complete the construction and the agreements.
12. At the commencement of the hearing, Mill Street's counsel advised that the proposed sale agreements were no longer in place and Mill Street was unable to raise any

- financing to complete the construction or pay out its creditors. If a receiver was to be appointed, it opposed DUCA's application and supported Rescom's motion.
13. All the secured creditors agree that it is both just and convenient that a receiver be appointed. There is no issue that both proposed receivers are qualified to undertake to job. The issue is which proposed receiver should be appointed.
 14. DUCA submits that it should be entitled to its choice of receiver as the first ranking secured creditor. It has indicated its intention to appoint a receiver since default and only consented to the appointment of the interim receiver on the basis it was without prejudice to its rights to seek the appointment of its own receiver. Notwithstanding various statements by the applicants and Rescom, its debt remains in default.
 15. DUCA further submits that Rescom is effectively a proxy for the applicants who agreed not to oppose its application. It denies Rescom and Mill Street's allegation that it simply wants to sell the property, as is, without completing the construction. While it has not put forward a plan, it submits that once its receiver takes possession and assesses the situation, it will return to court with a plan.
 16. Rescom submits that its motion should be allowed. As the DIP lender, it is a stakeholder and is not bound by the applicants' undertaking. It submits that it is more economical and efficient to appoint the interim receiver based on its familiarity with the project. The appointment of DUCA's receiver will increase costs and delay construction of the project. Further, DUCA has very little risk in being fully paid out. It is the applicants and Rescom whose debt ranks behind DUCCA who have the real risk. Further, Rescom has offered to "de-risk" DUCCA by paying it \$2 million towards its debt, continuing to service the debt and continuing it to rank as the first secured creditor.
 17. While I agree both proposed receivers are qualified, I lean towards extending the interim receiver. The objective is to finish Phase 1 to maximize the value of the property. There is not much left to complete. The interim receiver clearly has familiarity with the project which is important in finishing Phase 1 as quickly and as economically as possible, particularly given there are potential tenant issues that could arise with delay. Substituting Spergel at the present time will necessarily lead to increased costs and delay. While I am concerned with the delays that have occurred to date, the fact that the applicants, Rescom and Mill Street, the parties that have the most at risk, all support the interim receiver's appointment to finish Phase 1 in a timely manner negates that concern.
 18. While DUCA has not been paid out, it is and will; remain the first ranking secured creditor. Further, based on Rescom's commitments to "de-risk" it, it will not be prejudiced by the appointment of the interim receiver. Nor do I consider that Rescom is bound by the applicants undertaking not to oppose DUCA's application.
 19. For the above reasons therefore, I allow DUCA's motion to lift the stay to enable it to bring its application but dismiss the application. Further, I allow Rescom's motion and appoint Rosen Goldberg as receiver and manager, without security, of all assets, undertakings, and properties of Mill Street in accordance with the terms set forth in Rescom's revised draft order uploaded to Caselines on September 9, 2021, save and except that the authorization for further borrowings in paragraph 11 should not exceed

\$1,000,000 over and above the initial \$2 million already authorized based on the estimated costs to complete Phase 1. If further funds are required, they can be authorized.

20. If a revised order can be sent to me in Word format, I will arrange to have it signed and circulated to all parties.
21. In Mill Street's original motion record, it included as an exhibit a copy of a draft lease from an intended fuel supplier. No agreement was reached and the fuel supplier considers its draft lease confidential. Mill Street and the fuel supplier have agreed that the draft lease will be removed from its motion record and the motion record will be refiled. That has occurred on Caselines. In order to ensure it also occurs in the court file, I direct court staff to replace Mill Street's original motion record with the replacement record excluding the fuel lease and return the original to Mill Street.



L. A. Pattillo J.

September 10, 2021

App 'A'

COUNSEL SLIP

Court File Number: CV-21-00660056-00CL

Date: Thursday Sep. 9, 2021 – 10:00 a.m.
via Zoom

Title of Proceeding: Dorr Capital Corporation et al v. Mill Street Ventures GP Ltd.

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 Sept 10/21