



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-22-00679209-00CL HEARING DATE: 21 December 2022

NO. ON LIST: 5

TITLE OF PROCEEDING: DIETRICH v. MCLAREN
BEFORE JUSTICE: MADAM JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Crown:

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For Defendant, Respondent, Defence:

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For Other:

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BRENDAN BISSEL (<i>counsel</i>)	Albert Gelman Inc, court-appointed liquidator	bissell@gsnh.com
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ENDORSEMENT OF JUSTICE KIMMEL:

1. This is a motion by Albert Gelman Inc. ("AGI") in its capacity as liquidator (in such capacity, the "Liquidator") appointed pursuant to the Business Corporations Act, (the "BCA") over all of the assets, undertakings and properties of 1827403 Ontario Inc., 1853997 Ontario Inc., 1885926 Ontario Inc., 1950940 Ontario Inc., 1950941 Ontario Inc. ("1950941") and 1950979 Ontario Inc. (together the "Companies") for an approval and vesting order ("AVO") in respect of a sale transaction (the "Transaction") in which the Liquidator has entered into an agreement on behalf of 1950941 with Steven Robertson in trust dated October 9, 2022 (since assigned to 1000353840 Ontario Inc.), as purchaser (the "Purchaser") to sell all of 1950941's assets, including a building at 144 Brock Street in Peterborough (the "Brock Property").
2. In addition, a sealing order is sought in respect of certain confidential appendices to the Liquidator's Third Report dated December 13, 2022 (the "Third Report") and for the approval of the Liquidator's activities and of the fees of the Liquidator and its counsel.
3. This motion was served on the service list a week in advance and, aside from the counsel appearing today (for the applicant and respondent, the sole shareholders of the Companies), no other stakeholders have responded to the motion or indicated any objections or concerns about the orders sought.
4. The Transaction was negotiated following a conventional marketing and sales process through an MLS listing. After two list price reductions and multiple offers that the Liquidator did not consider to be acceptable, the Purchaser made an offer and negotiations ensued that resulted in the Transaction. Although the purchase price is less than the value of the last (confidential) appraisal of the Brock Property, the Liquidator considers the purchase price to be reasonable having regard to the (confidential) summary of offers and prices prepared by the listing broker and having regard to the appraisal itself.
5. The Liquidator recommends the approval of the Transaction, having regard to the market exposure (of approximately 3 months), the level of interest expressed and offers received, and the cost of carrying the Brock Property. The open market is one of the best indicators of value and the Transaction is a reflection of the market's assessment of the value of the Brock Property.
6. I am satisfied that the sales process that was undertaken meets the requirements of the principles *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) and that the proposed AVO in respect of the Brock Property should be approved.
7. The requested partial sealing order is limited in its scope (only specifically identified confidential exhibits) and in time (until the contemplated transaction is completed). It is necessary to protect commercially sensitive information that could negatively impact the Companies and their stakeholder if this Transaction is not completed and further efforts to sell the Brock Property have to be undertaken.
8. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is time limited (until the closing of the Transaction or further court order) and restricted only to aspects of the confidential exhibits that contain sensitive and confidential information about the price and value of the Transaction and other offers for the purchase of the Brock Property. It is necessary to avoid any interference with subsequent attempts to market and sell the Brock Property, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved Transaction. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
9. 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 requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with the approval and vesting orders.
10. The Liquidator is directed to ensure that the sealed confidential exhibits are provided 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 exhibits can be physically sealed. The Liquidator is further directed to ensure that the confidential exhibits are “unsealed” upon the filing of the Liquidator’s Certificate for the sale of the Purchased Assets, or further court order, as provided for in paragraph 8 of the AVO.

11. The fees claimed for the Liquidator and its counsel are supported by affidavits and accounts rendered and reflect the challenges of this liquidation, including the sales process, which were met with proportionate responses. The professional fees for which approval is sought are commensurate with the tasks performed and the time spent and are consistent with comparable professionals’ rates. I find them to be fair, reasonable and justified in the circumstances. See *Confectionately Yours Inc. (Re)*, 2002 CanLII 45059 (ON CA), paras. 42-54.
12. The approval of the Third Report and activities described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders. The approval of the interim fees and activities of court appointed officers provides stability and other recognized salutary effects. See *Target Canada Co. (Re)*, 2015 ONSC 7574, at paras. 2 and 23.
13. Various questions were raised in the course of the hearing by counsel for the applicant that were directed to the Liquidator’s counsel. Some may require further follow-up, independent of the specific orders sought today.
14. Some specific assurances were sought in connection with any future motions or proceedings that may be brought in connection with the matters addressed in paragraph 16 of the Liquidator’s Third Report. Counsel were asked to draft and agree upon language for the benefit of all stakeholders to be included in my endorsement to address this.
15. Counsel have since advised that they have been unable to come to an agreement on this and have asked for the opportunity to make further submissions. In the meantime, they have revised the draft form of ancillary order to exclude approval of this aspect of the Receiver’s Report, pending that determination. If they seek any further direction or order from the court with respect to the activities and anticipated motion of the Liquidator in paragraph 16(a) of the Liquidator’s Third Report, counsel are directed to arrange a case conference with me through the commercial list office.
16. Orders (AVO and ancillary order) both dated December 21, 2022 to go in the forms signed by me today.

A handwritten signature in black ink that reads "Kimmel J." The signature is written in a cursive, flowing style.

KIMMEL J.