

CITATION:

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM
(Rule 59.02(2)(c)(i))

BEFORE Judge/Case Management Associate Judges MR. JUSTICE H. J. WILTON-SIEGEL Court File Number: CV-23-00701877-00CL

Title of Proceeding: THE TORONTO-DOMINION BANK Plaintiff(s)
-v-
IMAGES LIFE MEDIA INC. et al Defendants(s)

Case Management: [] Yes If so, by whom: X No

Participants and Non-Participants: (Rule 59.02(2)(vii))

Table with 5 columns: Party, Counsel, E-mail Address, Phone #, Participant (Y/N). Rows include Plaintiff - TD Bank, Receiver Albert Gelman, and Defendant.

Date Heard: (Rule 59.02(2)(c)(iii)) November 23, 2023

Nature of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))
[X] Motion [] Appeal [] Case Conference [] Pre-Trial Conference [] Application

Format of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))
[] In Writing [] Telephone [X] Videoconference [] In Person
If in person, indicate courthouse address:

Relief Requested: (Rule 59.02(2)(c)(v))

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Costs: On a **N/A** indemnity basis, fixed at \$ _____ are payable
by _____ to _____ [when] _____

Brief Reasons, if any: *(Rule 59.02(2)(b))*

This matter was scheduled in a case conference before Mr. Justice Cavanagh on September 20, 2023 who set a mandatory timetable in order to ensure this hearing date. The Receiver's motion record for this hearing, including the Receiver's Supplementary Report, were served on the defendants by October 30, 2023. The defendants took no action until the evening before this hearing when Mr. Baker says he served and filed responding materials which do not however appear on Caselines. He seeks a cross-examination of the appraiser for the Receiver for the reasons described below. The deadline for cross-examinations under the schedule established by Mr. Justice Cavanagh was November 10, 2023. I will deal with the five items of requested relief in turn.

The Proposed Sale Transaction

The Receiver seeks approval of the proposed sale of a property known municipally as 115 Walnut Street, Toronto (the "Property") pursuant to an agreement dated October 18, 2023 between the Receiver and Nikesh Rai in trust for a company to be incorporated (the "Agreement") and assigned to Nikhil Rai (the "Purchaser").

The Debtors, Images Life Media Inc. and 2531509 Ontario Inc. (collectively, the "Debtors"), and Jao Paul Henriques seek an adjournment in order to examine the appraiser who was retained by the Receiver. The appraiser appraised the Property as of July 31, 2023.

Mr. Baker says that the same appraiser had previously appraised the Property at \$4.3m as of October 24, 2022. Mr. Baker submits that the diminution in value between these dates was far less than the difference between these appraisals. He suggests that the lower appraisal is inaccurate and its use for the purposes of fixing the listing price of \$2,475,000 has resulted in a significant loss of value.

Whatever the merits of this argument in general, there is no support for it in the present case. Mr. Henriques has tried to sell the Property at various times since March 2021. Most recently, the Property was listed at \$4.5 million on March 20, 2022, \$4.45 million on September 6, 2022 and \$3.995 million on February 16, 2023. In each case, Mr. Henriques was unsuccessful in finding a purchaser at the listed price.

The Receiver listed the Property on MLS on September 12, 2023. The Property remained listed for 36 days, 21 inquiries were received and there were 9 showings. A marketing package was circulated to prospective buyers. The result was three offers of which the offer accepted by the Trustee after a negotiation represented the best available offer in the opinion of the

Receiver. It is also noteworthy that the accepted offer is unconditional.

Given the foregoing, I am satisfied that the Property has been broadly marketed, by both Mr. Henriques and the Receiver, and that the price under the Agreement represents the fair market value of the Property at this time. Apart from Mr. Baker's submission, which is superseded by this evidence of the actual market price of the Property, there is no objection raised to the integrity of the sales price or any unfairness in respect of that process. I see no merit in the submission of Mr. Baker regarding the listing price given the evidence of the market price. For this reason, there is no basis for the requested adjournment, even before consideration of the absence of an adequate explanation for the defendants' failure to respond to the timetable set by Mr. Justice Cavanagh.

Accordingly, the proposed transaction is approved. The confidential appendices A, B and C to the Receiver's Supplementary Report will be sealed pending closing of the transaction.

The Remaining Relief

The Receiver seeks the following additional relief.

First, the Receiver seeks orders assigning the Debtors into bankruptcy for the purpose of using the provisions under the *Bankruptcy and Insolvency Act* (the "BIA") to require Mr. Henriques to submit to an examination in respect of, among other things, the property, plant and equipment listed on the balance sheet of Images Life Media Inc. having a value of approximately \$2.5 million. To date Mr. Henriques has not responded to multiple requests for information regarding those assets. Given that the Debtors' known assets are insufficient to enable payment of their obligations, this is a reasonable request. Any disadvantage resulting from this relief is solely the responsibility of Mr. Henriques, who could have avoided this action by responding to the Receiver's requests.

The Debtors each have debts in excess of \$1,000 and each has ceased to pay its obligations as they fall due. I am satisfied that the Court has the authority to order this relief under s. 49(1) of the BIA given the purpose of the statute and this provision in particular.

Second, the Receiver seeks approval of its First Report and its Supplementary Report. The Receiver also seeks approval of its fees and the fees of its counsel. No objections have been received in respect of this relief. In particular, Mr. Baker confirmed that his client was not objecting to the Receiver's activities or the fees sought on this motion.

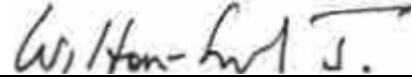
Lastly, the Receiver seeks approval of the proposed distribution to the Toronto-Dominion Bank (the "T-D") of the funds remaining after completion of the proposed sale transaction. While Mr. Henriques intends to challenge the validity of the T-D security and the calculation of interest owing under the financing arrangements between the T-D and the Debtors, this issue will be addressed in the Statement of Defence and Counterclaim of the Debtors and Mr. Henriques in the action commenced by the T-D Statement of Claim.

Based on the foregoing, an approval and vesting order and a further approval and assignment in bankruptcy order to go in the forms attached.

Additional pages attached: Yes No

November 24, 20 **23**

Date of Endorsement (Rule 59.02(2)(c)(ii))



Signature of Judge/Case Management Master (Rule 59.02(2)(c)(i))