



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00679109-00CL

DATE: February 21, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: Dietrich v. McLaren

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Joel Turgeon	Albert Gelman Inc. (Liquidator)	jturgeon@reconllp.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Danny Nunes	Paul Dietrich	danny.nunes@dlapiper.com

For Other, Self-Represented:

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ENDORSEMENT OF JUSTICE STEELE:

[1] This is a motion by Liquidator of the Companies (as defined in the factum) for:

- a. An order authorizing the Liquidator to conduct a claims solicitation and barring process for claims against 1950979 Ontario Inc. and 1827403 Ontario Inc.
- b. An order that:
 - i. Authorizes the Liquidator to assign 1950941 Ontario Inc., 1853997 Ontario Inc., 1885926 Ontario Inc., and 1950940 Ontario Inc. (collectively the “Insolvent Companies”) in bankruptcy and to act as the Insolvent Companies’ trustee-in-bankruptcy under the *Bankruptcy and Insolvency Act*;
 - ii. Authorizes the Liquidator to release certain surplus funds to the Purchaser;
 - iii. Approves the Liquidator’s Fifth and Sixth reports; and
 - iv. Approves fees and disbursements of the Liquidator and its counsel.

[2] The applicant and the respondent are the sole shareholders of the Companies. In the context of litigation between the two shareholders, they agreed to liquidate the Companies through a court-supervised process pursuant to s. 206 to 244 of the *Business Corporations Act* (Ontario) (the “OBCA”).

[3] No person objected to the relief sought by the Liquidator.

Should the Court approve the Claims Process?

[4] As noted by the Liquidator, the Court has jurisdiction to order claims determination and barring processes. Section 209 of the OBCA provides that the Court “may make any interim or other order as is considered just.” As set out in footnote 24 of the Liquidator’s factum, this Court has made a similar order on many occasions.

[5] The Liquidator submits that the Claims Process Order should be granted because the terms of the proposed process are typical, reasonable and efficacious. The Liquidator notes that:

- a. Creditors will receive reasonable notice of the process through the publication of the Claims Process and Claims Bar Date in a national newspaper, and the Liquidator will notify all known creditors directly;

- b. Creditors are afforded more than five weeks to file claims before the Claims Bar Date, which the Liquidator states is ample time in the circumstances;
- c. Creditors who disagree with the Liquidator's determination of a claim are provided with a direct right of appeal to the Court; and
- d. The provision that any appeal shall be a true appeal is appropriate as it strikes a reasonable balance between the creditors' direct right of appeal and the interest of the estate in an expeditious and cost-effective process.

[6] I am satisfied that the Court should approve the Claims Process.

Should the Court authorize the Liquidator to assign the Insolvent Companies in Bankruptcy and act as Trustee-in-bankruptcy?

[7] The Liquidator has determined that the Insolvent Companies are "insolvent" for purposes of the BIA. The Insolvent Companies' liabilities exceed their assets.

[8] The Liquidator submits that because the Insolvent Companies are insolvent a bankruptcy is the appropriate process to ascertain claims against them and distribute their assets to their creditors.

[9] As noted above, section 209 of the OBCA gives the Court broad jurisdiction to make orders that are just and appropriate in the circumstances.

[10] I am satisfied that the Court should authorize the Liquidator to assign the Insolvent Companies in bankruptcy.

[11] Further paragraph 27 of Liquidator's appointment order provides that the Liquidator is authorized to act as the Insolvent Companies' trustee-in-bankruptcy. I agree with the Liquidator's submission that because the Liquidator is already familiar with the Companies' assets, liabilities and affairs, it will save time and costs for the Liquidator to act as trustee-in-bankruptcy.

Should the Court authorize the Liquidator to release the Surplus Funds to the Purchaser?

[12] 1950979 Ontario Inc. previously owned property municipally known as 888 Whitefield Drive, Peterborough. In September, the Court granted an approval and vesting order approving the Liquidator's sale of this property to a company owned by the Respondent (the "Purchaser").

[13] 1950979 financed the construction of 888 Whitefield under a mortgage from Canada Mortgage and Housing Corporation. After payment of construction costs, 1950979 remained in possession of an unused balance of \$124,953 (the "Surplus Funds"). Under the agreement of purchase and sale and the AVO, the Purchaser was assigned all of 1950979's rights under the CMHC mortgage, including with respect to the Surplus Funds.

- [14] The Liquidator states that the Purchaser should be entitled to the benefit of the Surplus Funds. The Liquidator is of the view that this is case even though 1950979 failed to hold the Surplus Funds in a segregated account.
- [15] The Liquidator states that it understands that the shareholders agree, and CMHC is not opposed, to the delivery of the Surplus Funds to the Purchaser and requests the Court's direction to make the transfer.
- [16] The transfer of the Surplus Funds to the Purchaser is approved.
- [17] The Liquidator also seeks approval of its fees and disbursements and those of its counsel. The fees are supported by fee affidavits, with detailed dockets. I am satisfied that the fees and disbursements are fair and reasonable and approve same.
- [18] Orders attached.