



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00720368-00CL

DATE: August 9, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: MILESTONE DISTRIBUTION 2024 LTD. v. MILESTONE GRANITE & MARBLE LTD.

BEFORE: JUSTICE KIMMEL

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Shahrazad Hamraz	Milestone Distribution 2024 Ltd.	<a href="mailto:shamraz@ln.law">shamraz@ln.law</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Jessica Wuthmann	Counsels to albert Gelman inc. (receiver)	<a href="mailto:jwuthmann@reconllp.com">jwuthmann@reconllp.com</a>
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**Other:**

Name of Person Appearing	Name of Party	Contact Info

**ENDORSEMENT OF JUSTICE KIMMEL:**

[1] On June 12, 2024, Albert Gelman Inc. (the "Receiver"), was appointed as receiver over the assets, undertakings and properties of Milestone Granite & Marble LTD. (the "Debtor") and the court approved a stalking horse sale process to market the Debtor's business (the "Receivership Order"). Having carried out the sale process in accordance with the court's prior order, the Receiver now seeks:

- a. An approval and vesting order ("AVO") in respect of the sale transaction (the "Transaction") contemplated by the stalking horse asset purchase agreement dated June 12, 2024 (the "Sale Agreement") between the Applicant, as purchaser (the "Purchaser"); and
- b. An Ancillary Order that approves:
  - i. The Pre-Filing Report of the Receiver dated June 8, 2024<sup>4</sup> and the First Report of the Receiver dated July 30, 2024<sup>6</sup> (the "First Report", and, together, the "Receiver's Reports") as well as the activities of the Receiver described therein, including the Receiver's interim statements of receipts and disbursements for the period from June 12, 2024 to July 26, 2024;
  - ii. the fees and disbursements of the Receiver and its independent legal counsel for the period from December 8, 2023 to July 28, 2024 (the "Professional Fees"), as set out in the fee affidavits appended at Appendices "D" and "E" of the First Report (together, the "Fee Affidavits"), including the administrative costs required to complete the administration of the Debtor's estate (the "Remaining Fees and Disbursements"), and directing the Receiver to pay same from available funds;
  - iii. the Receiver's proposed distribution of the sale proceeds; and
  - iv. the eventual termination of the Receivership and the Receiver's discharge.

[2] The Applicant Purchaser is the Debtor's first-ranking secured creditor, having purchased and taken assignment of the debt and security position of all the Debtor's prior secured creditors pursuant to an assignment agreement entered into on February 29, 2024. The primary purpose of this receivership proceeding was to create a stabilized environment to enable the Receiver to conduct a sale process with respect to the Debtor's assets and business wherein the Purchaser would put forward a "stalking horse" bid.

[3] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Receiver's factum filed on this motion.

[4] The Receiver completed the Sale Process in accordance with the Receivership Order.

[5] Two parties executed a non-disclosure agreement and were given access to the data room to perform due diligence. Neither of them submitted bids. No bids were received by the

Bid Deadline. Accordingly, the Purchaser's credit bid was deemed the successful bidder, and the Transaction was deemed the winning bid, subject to approval of this Court.

- [6] The terms of the Sale Agreement are described in detail in the Receiver's factum filed on this motion. With the exception of the removal of some contracts from the schedule of assumed contracts that were determined not to be owned by the Debtor, the executed Sale Agreement is the same as the stalking horse agreement that the court approved by the June 12, 2024 order. The Transaction must close within 10 day of the issuance of the AVO, or such other mutually agreed-upon closing date.
- [7] The Receiver recommends that the court approve the Transaction. There are no other actionable transactions and there are no more funds available to conduct a further marketing or solicitation process, nor does the Receiver have any reason to believe that doing so would lead to a transaction that is better for the stakeholders. The sole secured creditor/Purchaser supports the court's approval of this Transaction, that will extinguish the secured debt, allow for payment of post-appointment liabilities and result in the assumption of some unsecured liabilities, while allowing for the possibility of continued employment of the employees.
- [8] Subsequent to the closing of the Transaction, the Receiver will hold proceeds from the Transaction that it must distribute. The Receiver proposes to distribute the proceeds of sale as follows (the "Proposed Distribution"):
- a. all amounts secured by the Receiver's Charge on closing;
  - b. the Debtor's outstanding obligations to CRA on account of HST; and
  - c. any Priority Payables. The Receiver is not aware of any Priority Payables at this time, but if any arise or are identified, the Purchaser will be obligated to satisfy them.
- [9] The Court has jurisdiction to approve a sale of assets by the Receiver and to vest assets free and clear of encumbrances pursuant to section 243 of the BIA and section 100 of the CJA. In determining whether to approve a sale transaction proposed by a receiver, the Court considers the factors articulated by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), namely: (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (b) the interests of all parties; (c) the efficacy and integrity of the process by which offers are obtained; and (d) whether there has been unfairness in the working out of the process.
- [10] No one on the service list appeared to object to the orders sought by the Receiver on this motion. There are two employees who were not served (they are not creditors). They are aware of the receivership. The Purchaser has agreed that if they are offered continued

employment after the Transaction closes it will be on equal or better terms than their current employment. While not obligated to offer them employment, there is some reasonable prospect that they will be offered employment.

- [11] The Transaction satisfies the *Soundair* factors for the detailed reasons outlined in the Receiver's factum filed on this motion. The proposed form of AVO is consistent with the Commercial List Model order (with respect to the relevant provisions). In his June 12, 2024 endorsement, Justice Black also found, "the proposed stalking horse process to be reasonable and useful in the current circumstances, and find that the proposed sale process aligns with the factors outlined by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727."
- [12] The terms of the proposed Ancillary Order are relatively standard.
- [13] The Receiver seeks court approval of its Reports as well as the actions, conduct and activities described therein with the standard restriction on reliance by the Receiver only. Such relief is commonly granted for well-established policy reasons including the stability of ongoing insolvency proceedings. See for example, *Target Canada Co. (Re)*, 2015 ONSC 7574, at paras. 22, 23. The activities of the Receiver since the Receivership Order are described in detail in the Receiver's Reports. The activities were all necessary and efficiently undertaken pursuant to the Receiver's duties and powers set out in the Receivership Order.
- [14] The statement of receipts and disbursements appears to be in order.
- [15] The Receivership Order contemplated that the Receiver and its counsel would seek court approval of their fees. In determining whether to approve the accounts of a court-appointed receiver and its counsel, the court will consider the overall value contributed, taking into account (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts and (i) the cost of comparable services when performed in a prudent and economical manner. See BIA, s. 243(6); see *Bank of Nova Scotia v Diemer*, 2014 ONCA 851, paras. 33, 44, and 45.
- [16] The Receiver, with the assistance of RECON, provided significant value to the Debtor's stakeholders including by, among other things, creating a stabilized environment for the receivership proceeding, taking all necessary and reasonable steps to maximize the realization of the Debtor's Property, and conducting the Sale Process.
- [17] The Receiver estimates that the costs associated with the completion of the administration of the Debtor's estate will total approximately \$40,000 (i.e. the Remaining Fees and Disbursements). This includes payment of the Receiver and its independent counsel's fees

and disbursements post-dating the Fee Affidavits, including the preparation of materials for and attendance at the within motion, and the remaining administrative matters noted in the Receiver's Reports, including the preparation and filing of final tax returns and the other administrative matters incidental to the completion of this receivership proceeding (the "Final Administrative Matters").

- [18] The past and Remaining Fees and Disbursements for which approval is sought appear to be reasonable, and are supported by fee affidavits and set out the hourly rates and corresponding time and tasks for which the professionals seek payment.
- [19] The Proposed Distribution accords with the relevant factors to be considered as outlined in paragraphs 33 to 35 of the Receiver's factum filed on this motion. This Court held in *Runco v. Engenheiro*, 2023 ONSC 7231, at para. 32, citing *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173: "It is appropriate to authorize a receiver to make distributions of sale proceeds concurrently with the approval of such sale to maximize efficiency and avoid the need for additional motions."
- [20] The proposed termination, discharge and release are appropriate given that there will be no more assets for the Receiver to realize upon, the Receiver will have completed all its statutory duties and duties under the Receivership Order, and the administration of the Debtor's estate will be complete. The release of the Receiver, excluding gross negligence and willful misconduct is reasonable and appropriate to ensure finality. See *Pinnacle v. Kraus*, 2012 ONSC 6376, para, 47.
- [21] The AVO and Ancillary Order signed by me today shall have immediate effect without the necessity of formal issuance and entry.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in black ink.

KIMMEL J.