



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE
NO.:

CV-20-00651299-00CL

DATE: October 3, 2024

NO. ON LIST: 3

TITLE OF
PROCEEDING:

2615333 v. Central Park Ajax Developments Phase I Inc. et al.

BEFORE: Justice Cavanagh

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Wendy Greenspoon-Soer	2615333 Ontario Inc.	wgreenspoon@garfinkle.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Alexander Soutter	Court-appointed Receiver, TDB Restructuring Limited	asoutter@tgf.ca
John R. Hart	Town of Ajax	jhart@ritchieketcheson.com
Rushi Chakrabarti	The Receiver	rchakrabarti@tgf.ca
Alexandra Teodorescu	Lawco	ateodorescu@blaney.com
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Edmond Lamek	Ajax Master Holding Inc.	edmond.lamek@dlapiper.com
Jason Wadden	The Purchaser and Lakeshore Lux	jwadden@tyrllp.com
Aziza Hirsi	Investecs Development Inc.	Aziza.Hirsi@phoenixlawllp.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CAVANAGH:

[1] The Receiver seeks an order approving the sale of properties described as the “Harwood Properties” to the Purchaser. The Harwood Properties are comprised of certain properties described as the “Phase 1A Lands” (a parking lot that is intended to be the main site of a future condominium development), the “Phase 1B Lands” (lands currently units in a strip mall adjacent to the parking lot) and the “Utility Lands” (other units in the strip mall).

[2] No one appeared at the hearing to oppose the Receiver’s motion.

[3] The background to this motion is set out in the Fifth Report of the Receiver dated September 16, 2024.

[4] The Phase 1A Lands and the Utility Lands are subject to a Development Agreement with the Town. The Phase I the Lands are not subject to the Development Agreement. The Development Agreement provides that, upon the developer’s default, the Town could purchase the Phase 1A Lands and the Utility Lands at a certain price. Before the commencement of this proceeding, the Town commenced an action to enforce its repurchase right and determined that price.

[5] After the appointment order was made, the Receiver, after extensive efforts, was able to negotiate a New Development Agreement with the Town.

[6] The Receiver undertook an approved Sale Procedure more fully described in the Receiver’s Fourth Report that resulted in two bids, one of which was not a qualified bid (the bidder is the Purchaser) and the other was not acceptable to the Receiver or the Applicant.

[7] The Receiver approached the Town to address amendments to the New Development Agreement. The Town made an offer to purchase the Harwood Properties. While the parties were negotiating that offer, the Receiver received an offer from the Purchaser on superior terms. The Receiver ultimately entered into an agreement of purchase and sale (the “APS”) with the Purchaser. Pursuant to the APS, the Purchaser would satisfy the purchase price by paying a certain amount in cash and assuming a mortgage on title to the Harwood Properties held by an entity related to the Purchaser that secures the principal amount of \$18.5 million. Further, the Purchaser agreed to enter into the New Development Agreement with the Town.

[8] In assessing whether to approve a proposed sale of assets by a Court-appointed receiver, Ontario courts have consistently considered the factors set out in *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA): (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (b) the

efficacy and integrity of the process by which offers are obtained; (c) whether there has been unfairness in the working out of the process; and (d) the interests of all parties. The Court should balance all relevant factors when determining whether to approve a sale.

[9] I am satisfied that the factors in *Soundair* support approval of the sale transaction. In this respect, The Receiver has made significant and sufficient efforts to get the best price for the Harwood Properties. It carried out its obligations under the Sale Procedure Order with diligence. The Receiver moved for directions regarding a potential future sale process that would follow a motion by the Applicant to vary the Appointment Order. The Receiver acted diligently after this motion was decided. The Receiver has not acted improvidently. There has been no unfairness in the process.

[10] I am satisfied that the proposed allocation of the purchase price under the APS is reasonable and should be approved.

[11] The New Development Agreement contemplates that the purchase price will be held in escrow less an amount on account of “Sales, Marketing and Repurchase Costs”, which is released to the Receiver immediately. The Receiver has conservatively calculated its Sales, Marketing and Repurchase Costs and seeks an order authorizing it to distribute that amount (\$950,757.87). I am satisfied that the requested distribution should be authorized.

[12] I am satisfied that a sealing order should be granted to seal the Confidential Appendices (as defined in the Fifth Report) as they contain sensitive information. The *Sherman Estate* test is met in the circumstances.

[13] I am satisfied that the activities of the Receiver as set out in the Fifth Report should be approved. In this respect, I accept the submissions made on behalf of the Receiver at paragraph 49 of its factum. I also approve the Receiver’s Interim Statement of Receipts and Disbursements. I approve the fees and disbursements of the Receiver and its counsel set out in the fee affidavits appended to the Fifth Report.

[14] Order to issue in form of Order signed by me today.

Date: October 3, 2024