



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707989-00CL

DATE: 3

NO. ON LIST: 07 Oct 2024

TITLE OF PROCEEDING: 1180554 ONTARIO LIMITED v. CBJ DEVELOPMENTS INC. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jonathan Kulathungam	Lawyer for the Applicant, 1180554 Ontario Limited	jkulathungam@teplitskyllp.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jeff Larry	Lawyer for the Receiver	jeff.larry@paliareroland.com
Bryan Tannenbaum	Receivers	btannenbaum@tdbadvisory.ca
Jeff Berger		jberger@tdbadvisory.ca
David Badham	First Global Financial Corp. (Secured Creditor)	dbadham@btrlaw.ca

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] This motion is brought by TDB Restructuring Limited, in its capacity as the Court-appointed receiver (the "Receiver"), without security, of all the assets, undertakings and properties of CBJ - Clearview Garden Estates Inc., CBJ Bridle Park II Inc., and CBJ Developments Inc. (collectively, the "Debtors"), for, among, other things, the approval of the sale of three properties (the "Properties") that are the primary assets of the Debtors to 1180554 Ontario Limited (the first mortgagee) and vesting title to those properties in the designated purchaser.

- [2] On July 24, 2024, the Receiver and 118 entered into an asset purchase agreement ("APA") which contemplates 118's acquisition of the Properties through a credit bid. A sealing order is sought in respect of the precise amount of the credit that represents the purchase price under the APA.
- [3] At the request of First Global Financial Corp., the second mortgagee (whose debt and security will be extinguished by the requested order without any recovery), and over the objection of the Receiver and the first mortgagee, the motion has been adjourned to October 23, 2024 for one hour commencing at 11:30. The parties should reconfirm the start time prior to the hearing date as the start time is subject to change. The Receiver may wish to file an updated factum to address some of the issues raised at the hearing today, as it deems appropriate.
- [4] The adjournment was requested late, based on an affidavit only filed on behalf of the second mortgagee on the morning of the hearing of this motion. However, there is some concern about the service of the motion record, which the Receiver's affidavit of service indicates was served by email on September 30, 2024, but which counsel for the second mortgagee says he did not receive until he asked for it last week after being served with the factum for this motion.
- [5] Although the events leading up to this motion were known to the second mortgagee – it was involved in an earlier transaction that the court approved but that did not close and it chose not to submit a further bid by the new bid deadline in July, 2024 - the terms of the transaction for which approval is sought were not known to the second mortgagee until last week and some aspects of the transaction are the subject of a requested sealing order.
- [6] The Receiver says that there is no actionable transaction available under which there will be surplus funds for distribution to the second mortgagee. That may well be the case, but the second mortgagee should at least be afforded the time to satisfy itself of that with the benefit of advice from its counsel who appeared today to ask for the adjournment so he could obtain instructions from his client.
- [7] In these circumstances, after considering the potential prejudice to the second mortgagee whose interests and claims will be extinguished by the order sought today, and balancing that against the prejudice to the Debtors and other stakeholders of the continued accrual of interest and expenses (some of which may also ultimately prejudice the second mortgagee if there are, or would otherwise have been, surplus funds available for distribution in accordance with the priority agreement that are expended in the interim in accordance with the terms of that agreement), I determined that it was reasonable and appropriate to grant a short adjournment of approximately two weeks.
- [8] The second mortgagee should not treat this as an invitation to object just for the sake of objecting. The record discloses a very robust sales process that has not produced a single bid from any third party. The first failed transaction involved the second mortgagee itself

and the one presently before the court for approval is a credit bid by the first secured lender. This is despite the fact that the Properties have been listed for sale for almost a year, on and off and thus have been well exposed to the market.

A handwritten signature in cursive script that reads "Kimmel J." with a period at the end.

KIMMEL J.