

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

FACTUM

December 3, 2024

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PART I - INTRODUCTION

1. This factum is intended to briefly convey the position of 2858087 Ontario Inc. (“**285 Corp.**”) and Issam A. Saad (“**Saad**”), who oppose the Court granting the relief sought on this motion on the basis that the bidding process carried out by the Receiver has not obtained full value for creditors. These parties ask that the bidding process be extended and opened up to additional bidders.

PART II - SUMMARY OF FACTS

2. 258 Corp. is an Ontario corporation which Saad is the sole director of.¹

¹ Affidavit of Carly Vande Weghe sworn December 3, 2024 (“**Vande Weghe Affidavit**”), Ex. A – MR Tab 1A, pp. 4-10.

3. The debtor company 5004591 Ontario Inc. (“**500 Corp.**”) is an Ontario corporation, which prior to his death, was directed by the late Nicholas Kyriacopoulos (“**Kyriacopoulos**”). 500 Corp. is the registered owner of the properties described as PIN Nos. 10306-0032 through and including 10306-0035, and 103016-0064, being 2849-2857 Islington Avenue, Toronto, Ontario (the “**Islington Properties**”). The debtor company Kings Townhomes Limited (“**Kings Townhomes**”), formerly known as Conacher Holdings Inc., is an Ontario corporation that Kyriacopoulos was the sole director of. Kings Townhomes is the registered owner of the properties described as PIN Nos. 36061-0475 through and including 36061-0734 on Conacher Drive, Kingston, Ontario (the “**Kingston Properties**”).² Anea Group Inc. (“**Anea**”) is an Ontario corporation which Kyriacopoulos was the sole director of.

4. On June 1, 2021, Saad and Anea executed a promissory note (the “**2021 Promissory Note**”).³ Pursuant to the 2021 Promissory Note, Anea promised to pay Saad \$4,500,000. Kyriacopoulos in his capacity and President and Director of Anea executed the 2021 Promissory Note.

5. On December 11, 2023, in consideration for Saad forbearing on the 2021 Promissory Note and additional funds loaned, 500 Corp. and Kings Townhomes (both of which were controlled by Kyriacopoulos) executed a promissory note in favour of 285 Corp. (the “**2023 Promissory Note**”).⁴ Kyriacopoulos executed the 2023 Promissory Note on behalf of 500 Corp. and Kings Townhomes, as well in his personal capacity as a guarantor, guaranteeing the obligations of 500 Corp. and Kings Townhomes.

² Third Report of the Receiver dated November 25, 2024 - Motion Record of the Receiver dated November 25, 2024 (“**Receiver’s Motion Record**”) Tab 2, pp. 20-36.

³ Vande Weghe Affidavit, Ex. B – MR Tab 1B, p. 12.

⁴ Vande Weghe Affidavit, Ex. C – MR Tab 1C, pp. 14-40.

6. As part of the 2023 Promissory Note, Kings Townhomes provided security by agreeing to grant 285 Corp. a charge/mortgage over the Kingston Properties as collateral for the monies owing under the 2023 Promissory Note. Similarly, 500 Corp. agreed to grant 285 Corp. a charge/mortgage over the Islington Properties as collateral for the monies owing under the 2023 Promissory Note.

7. For the purposes of this proceeding, and with respect to the Islington Properties and Kingston Properties, 285 Corp.'s position is that it holds equitable mortgages over those properties. The priority of such charges has not been dealt with by the Court to date.

8. Other facts are as set out in the receiver's motion record dated November 25, 2024, and its supplementary motion record dated November 29, 2024.⁵

PART III - LAW & ARGUMENT

9. In considering whether to approve a proposed sale of assets by a court-appointed receiver, the general duty of the court is to consider: whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; the interest of all parties; the efficacy and the integrity of the process by which the offers were obtained, and whether there has been unfairness in working out the process.⁶

10. The receiver's primary task is to ensure that the highest value is received for the assets so as to maximise the return to the creditors.⁷

⁵ Receiver's Motion Record; Supplementary Motion Record of the Receiver dated November 29, 2024.

⁶ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (ON CA) [*Soundair*].

⁷ *Soundair*, supra at para. 12.

11. Each case must be decided upon its own facts, and with a view to producing a proper result within the legal framework. Courts will look at the price obtained, whether there were competing offers that were higher, losses that the parties will suffer, and the number of purchasers or potential purchasers.⁸

12. When reviewing the process leading to a sale, the court will assess whether it aligned with principles of commercial efficiency and integrity. This includes factors such as the openness and transparency of the sales process, the extent of listing and marketing efforts, whether the receiver engaged with relevant stakeholders (e.g., creditors), whether negotiations occurred privately, the total liabilities involved, the priority structure among secured creditors, consultation with creditors during the process, the comparison of the purchase price with obtained valuations, the number of offers received, and the chosen method of sale.⁹ A court will simply not apply an automatic stamp of approval of the decision of a receiver.

13. Courts have refused to approve sales due to a variety of circumstances, including: an uncompetitive bidding process,¹⁰ the failure to arrange for a valuation of the property, inadequacies in the marketing process,¹¹ and lack of open market listing and efforts to obtain the best price.¹²

14. However, even where an offer been selected and the sale process determined reasonable, the court has jurisdiction to re-open the sales process where there is a real possibility that a new offer would lead to a marked improved return for creditors.¹³

⁸ *1117387 Ontario Inc. v. National Trust Company*, [2010 ONCA 340](#) (CanLII) at [paras. 76 – 77](#) [*1117387 Ontario Inc.*].

⁹ *1117387 Ontario Inc.*, *supra* at [para. 82](#); *Canrock Ventures v. Ambercore Software*, [2011 ONSC 2308](#) (CanLII) at [paras. 33 – 34](#) [*Canrock*].

¹⁰ *Laurentian Bank of Canada v. World Vinters Corp.*, [2002 CanLII 49605](#) (ON SC) at paras. [26](#), [28 – 31](#).

¹¹ *Farm Credit Canada v. Gidda*, [2015 BCSC 2188](#) (CanLII) at paras. [21 – 31](#) and [57 – 60](#).

¹² *Lash v. Lash Point Association Corp.*, [2022 ONCA 361](#) (CanLII) at paras. [40 – 44](#) and [53 – 54](#).

¹³ *1587930 Ontario Ltd., v. 2031903 Ontario Ltd.*, [2006 CanLII 34994](#) (ON SC).

15. In this case, Saad and 285 Corp. take issue with, principally, the failure to market Islington Properties as individual units (as opposed to as a whole) and to a broader market. Saad and 285 Corp. are concerned that the goal of completing a quick sale is impeding the obtaining of maximum value.

16. These interested parties request that the receiver consider reopening the process and adopt a competitive bidding process which could yield a significantly improved return for creditors. This should include offering the Islington Properties for sale on an individual basis and that all interested parties to this proceeding may participate in the sales process. To the extent that the Court is concerned about undue delay and extension of the sale process, this can be accommodated by putting time constraints on the process.

PART IV - ORDER REQUESTED

17. Saad and 285 Corp. request that the Court not approve the sale of the Islington Properties and make an order reopening the sales process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of December, 2024.



Ryan Taylor

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (ON CA)
2. *1117387 Ontario Inc. v. National Trust Company*, [2010 ONCA 340](#)
3. *Canrock Ventures v. Ambercore Software*, [2011 ONSC 2308](#) (CanLII)
4. *Laurentian Bank of Canada v. World Vinters Corp.*, [2002 CanLII 49605](#) (ON SC)
5. *Farm Credit Canada v. Gidda*, [2015 BCSC 2188](#) (CanLII)
6. *Lash v. Lash Point Association Corp.*, [2022 ONCA 361](#) (CanLII)
7. *1587930 Ontario Ltd., v. 2031903 Ontario Ltd.*, [2006 CanLII 34994](#) (ON SC)

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