

Weisz, Daniel

From: Gilmore, Madam Justice Cory (SCJ) [REDACTED]
Sent: Tuesday, April 20, 2021 2:33 PM
To: Jeff.Larry@paliareroland.com; elizabeth.rathbone@paliareroland.com; Tannenbaum, Bryan; Weisz, Daniel; jwortzman@teplitskycolson.com; ReedijkB@bennettjones.com; raleck@stivervale.com; amand@cfmrlaw.com; Catherine Allen; gruberd@bennettjones.com
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: Cameron Stephens Mortgage Capital Ltd. v. Yorkville Central Investments Inc. et al. Court File No. CV-20-00644927-00CL

Endorsement of Gilmore, J.

Overview

The Receiver in this matter brings a motion for approval of its Fourth Report, payment of fees, distribution of surplus funds to the Debtors (the Respondents herein) and lifting the stay of proceedings as against the Debtors. The Receiver then seeks to be discharged. The Debtors do not oppose the Receiver's Motion. SC Land and two other unsecured trade creditors oppose the payment of any surplus to the Debtors. They seek to have the Receiver continue and conduct a claims process.

Brief Factual Background and the Positions of the Parties

As a result of default in the payment of its mortgage, the Applicant sought appointment of a Receiver pursuant to the terms of its mortgage. The Receiver was appointed over the subject properties by way of Court Order dated September 11, 2020. The property was sold to the Stalking Horse bidder SC Land who subsequently assigned the Stalking Horse Agreement to the Purchaser. The sale closed on March 1, 2021. The first and second mortgages were paid out in full on the sale as well as the Receiver's expenses and legal fees to the date of sale. After paying the remaining expenses to date the Receiver estimates it will have a surplus of \$275,000. As the Receiver was appointed only over the subject Properties and not the assets and affairs of the Debtors, it seeks to be discharged subject to the Court's direction. However, the Receiver will conduct a claims process for the unsecured creditors if the Court directs it to do so. The Receiver voiced some concerns about the cost of a claims process given the amount of the surplus.

The Respondents oppose any extension of the Receivership and seek to have the surplus funds paid out to them and the Receiver discharge. Doing otherwise would equate to preserving the Defendants' assets as security for a potential judgment is akin to a Mareva injunction where the opposing parties are neither judgment nor secured creditors. Further the SC Land claim relies on weak factual and legal arguments which cannot overcome the *Statute of Frauds*. The appointment of the Receiver at the behest of a secured creditor does not justify an extension of the receivership now that the secured creditors have been made whole. The trade creditors, such as ZGF, and SC Land are nothing more than contingent creditors who are effectively seeking execution before judgment and should be denied such a remedy in these circumstances.

The unsecured creditors argue that there is nothing in the Receivership Order which requires that any surplus be paid out to the Respondents. Further the Respondents are in breach of the Receivership Order having failed to pay out to the Receiver the sum of \$18,541.22 which were funds held by the Respondents which they agreed to forward to the Receiver in November 2020 but failed to do so. The unsecured creditors rely on an email from Mr. Bruce Rudichuk dated January 21, 2021 justifying the failure to send the funds to the Receiver on the basis that there would be a surplus and that "Accordingly, all remaining funds would either be forwarded back to the debtor or used to satisfy unsecured claims in a proof of claims process." Counsel on behalf of ZGF Architects (owed \$225,000 as per unpaid invoices) and

Medallion Capital Group (owed approximately \$5,000 in property management fees) were aligned in their position on the Receivership being extended.

Ruling

The Receiver does not oppose a claims process and the Respondents appeared to have anticipated one given the January 21, 2021 email. The Respondents equate this claims process as execution before judgment. However, claims processes are conducted routinely by Receivers which include secured, unsecured and preferred creditors. In any event, based on the limited information available to me it appears that the services of ZGF and Medallion were related to the subject property. As for the claim of SC Land, it is unclear how their claim can be crystallized in a claims process but that will be for the Receiver to decide.

The Receiver's motion is granted subject to the completion of the claims process as ordered herein. The surplus shall be used to pay the costs of the Receiver for the claims process plus any amounts found owing to unsecured creditors as a result of that process. The balance, if any, shall be paid to the Debtor.

The Receiver to provide a draft Order in accordance with this Ruling.

April 20, 2021.



Madam Justice Cory A. Gilmore
Ontario Superior Court of Justice
361 University Avenue
4th Floor
Toronto, Ontario
M5G 1T3

