

COUNSEL SLIPCOURT FILE
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ONTITLE OF
PROCEEDING FIRST SOURCE FINANCIAL MANAGEMENT INC. v. 2507448 ONTARIO INC.COUNSEL FOR:
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December 6, 2019

This is a motion by the individual investors for an order staying my vesting order of Nov 1, 2019; for relief from forfeiture and to not remove chattels until the motion is heard. On Nov 1, 2019 I granted an order approving the sale of the property at 581 Wellington Street West, Toronto in the receivership of the respondent 2507448 Ontario Inc. (the debtor), and providing for a vesting order. Apart from the applicant First Source's first mortgage there is also a 2nd and 3rd mortgage on the property. The third mortgage is registered in the names of Ed Gilmore, Olympia Trust Company and Computershare Trust Company. From the outset of the receivership proceedings, including the approval motion on November 1, 2019, the third mortgages were all given notice of the proceedings.

Mr. Hassan Pereira, who filed an affidavit in support of the motion says he is part of a group of investors in the third mortgage and that neither he or the other investors received notice of the approval (over)

Motion. Yet I'm advised that Mr. Pereira was in court on November 1, 2019 although he did not sign the counsel slip or indicate that he wished to make submissions to the court.

MS

In my view and as found, the third mortgagees had notice of the approval and vesting motion. Even if the individual investors didn't know about it, that is not the fault of the Receiver, it is the fault of the third mortgagees' outtitle, Gilmore Olympia Trust and Computershare for not informing them. I reject the argument that the individual investors had no notice of the motion.

On the ^{approval} motion the debtor sought time to enable it to obtain financing to pay out the first mortgage. I rejected that submission for a number of reasons, including there was no evidence of financing and, in any event, given the sales process & approvals which had been followed in the receivership, the first mortgagee had no right to redeem; Burnier Development Bank of Canada v. Marlwood Golf & Country Club Inc., [2015] O.J. No. 3283 (S.C.J.) at para. 25.

The individual investors make the same argument today. They ask for 14 days to enable them to get financing to pay out the first. As on Nov 1, 2019, the investors have provided no evidence of financing let alone an ability to raise such funding. Further, they would require a court order to redeem the first and for the reasons above (and on Nov 1, 2019), I would not grant that order.

The test for a stay is set out in RTR-MacDonald. As set out herein, I am satisfied that the investors have no claim or basis for interfering with the approved sale and vesting order. As found, they through their representatives, received notice of the proceeding and raised no objection at the time.

Nor do I find that relief from forfeiture is available to the investors in all the circumstances. There is no basis to overturn or set aside my Nov 1, 2019 Approval and Vesting Order, either under rule 37.14 or s. 187(5) of the BIA. The Chaffels have been resolved.

The sale of the property is scheduled for Monday Dec 9, 2019 and it should proceed. The motion is dismissed.

In the circumstances, the Receiver is entitled to its costs of the motion against Mr. Pereira. In my view, based on the Cost Outline and submissions of counsel, partial indemnity costs of \$5,000.00 in total is fair and reasonable. Payable by Mr. Pereira forthwith.

