ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00696349-00CL **DATE:** December 4, 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: VECTOR FINANCIAL SERVICES LIMITED v. VILLAGE DEVELOPMENTS INC.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
Katherine Yurkovich	Counsel for the Applicant, Vector Financial Services Limited	kate.yurkovich@gowlingwlg.com
Thomas Gertner		thomas.gertner@gowlingwlg.com

For Respondent:

Name of Person Appearing	Name of Party	Contact Info
Dino Mazzorato	Counsel for the Respondent, Village Developments Inc.	dgmazzorato@bellnet.ca

For Other:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Larry	Counsel for the Receiver, RSM Canada Limited (moving party)	jeff.larry@paliareroland.com
Ryan Hanna	Counsel for the Purchaser, Addison Wealth Management Inc.	rhanna@fijlaw.com
Matthew Gibson	Counsel for MVMT Capital	matthew@mgibsonlegal.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. RSM Canada Limited ("RSM"), in its capacity as court appointed receiver (the "Receiver") of the lands and premises known municipally as 485, 501 and 511 Ontario Street South, Milton, Ontario (the "Property") owned by the respondent, Village Developments Inc. (the "Debtor"), seeks the following orders:
    a. An approval and vesting order ("AVO") in respect of a transaction for the sale of the Property (the "Transaction") to the Addison Wealth Management Inc. (the "Purchaser" or "Addison"), a company related to the second mortgagee;
    b. an ancillary relief and discharge order (the "Ancillary Order"):
        i. authorizing the Receiver to make the Proposed Distribution (as defined in the Receiver's First Report, dated November 27, 2023 ("First Report");
        ii. approving the activities of the Receiver and the fees and disbursements of the Receiver and its counsel detailed in the First Report;
        iii. sealing the Confidential Appendices 1, 2 and 3 to the First Report pending the completion of the Transaction;
        iv. directing the principal of the Debtor to pay rent arrears that have accrued since the appointment of the Receiver; and
        v. discharging the Receiver.
2. Vector Financial Services Limited ("Vector") holds a first mortgage (the "Vector Mortgage") against the Property in the principal amount of $10,000,000. There are four subsequent mortgages on title.
3. Commencing on September 6, 2023 the Receiver carried out a sale process for the Property (the "Sale Process").
4. The Receiver commenced marketing the property in early September 2023 after selecting one from among three listing proposals received from three commercial real estate brokerages. The selected brokerage firm, CBRE, conducted a robust marketing process that resulted in the execution of fifteen executed confidentiality agreements from prospective purchasers who then received access to the Data Room.
5. The Sale Process did not generate any offers by the original bid deadline. Accordingly, the Receiver extended the bid deadline and subsequently received 3 offers for the Property.
6. The Receiver extended the deadline for bids under its Sale Process to give the Debtor additional time to obtain financing, but the Debtor was ultimately unable to do so.
7. As at the last extension of the bid deadline to October 27, 2023, three offers had been submitted to the Receiver. The highest and second highest offers were made by the Debtor and Addison. The Debtor's offer was the highest but the Receiver considered it to have significant uncertainty and the transaction risk associated with it. The Receiver had numerous concerns with the Debtor's offer including, most significantly, that the Debtor was unable to provide the Receiver with any comfort that it could obtain financing to complete the purchase transaction
8. The Receiver elected to proceed to negotiate with Addison, and eventually signed an agreement of purchase and sale dated November 27, 2023 (the "Addison APS") after the Debtor was afforded further time by the court following court appearances earlier in November to obtain new financing. The Debtor has been unable to do so and its counsel appeared at this hearing and advised the court that the Debtor is not opposing any of the relief sought. Nor are any of the other subsequent encumbrancers or any other parties on the service list.
9. The Transaction contemplates that the second mortgage (of the Purchaser's affiliate) shall remain place as a permitted encumbrance, and the AVO has been adapted to allow for that.
10. In all the circumstances, the Receiver regards the Addison APS as the offer which is the most advantageous to those creditors of the Property, particularly given that the Debtor has failed to demonstrate any ability to complete a refinancing or other transaction. The Receiver recommends that

this court approve the Addison APS and grant an Order vesting title in the Property to the purchaser upon the closing of the transaction contemplated by the Addison APS.

11. The Receiver did not seek the court's approval of the Sale Process in advance. It was not required to do so. The Appointment Order granted the Receiver the authority to do this.
12. Now the court must decide whether to grant approval of the Transaction and the AVO order, by applying the principles set out in the case of *Royal Bank of Canada v. Soundair Corp.*, 7 CBR (3d) 1: 46 OAC 321; 83 DLR (4th) 76; 4 OR (3d) 1. The considerations are summarized in paragraphs 40-46 of the Receiver's factum. An additional consideration is that the Debtor is now not opposing the relief sought, nor is any other stakeholder.
13. I am satisfied that the implementation of the Sale Process adopted by the Receiver was consistent with the *Soundair* principles, and the proposed Addison APS and Transaction with the Purchaser are fair and reasonable in the circumstances. Accordingly, the Transaction is approved and I am prepared to exercise my jurisdiction and discretion under s. 100 of the *Courts of Justice Act,* RSO 1990, c. C-43, to grant the requested AVO.
14. The First Report contains three confidential appendices being the listing proposals, summary of offers received and the unredacted Addison APS that discloses the purchase price (the "Confidential Appendices"). The Receiver seeks a sealing order in respect of the Confidential Appendices.
15. The Confidential Appendices contain sensitive commercial information which, if publicly disclosed, will pose a serious risk to the ability of the Receiver to later market and sell the Property if the Transaction does not close.
16. The requested partial sealing order is limited in its scope (only specifically identified Confidential Appendices) and in time (until the contemplated Transaction closes).
17. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the Debtor's Property, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved sale Transaction. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
18. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with the approval and vesting orders.
19. The Receiver is directed to ensure that the sealed Confidential Appendices are provided to the court clerk at the filing office in an envelope with a copy of this endorsement and the signed order with the relevant provisions highlighted so that the confidential exhibits can be physically sealed. The Receiver is further directed to ensure that the confidential exhibits are "unsealed" at an appropriate time after the closing of the Transaction.
20. The professional fees claimed for the Receiver and its counsel are supported by affidavits and reflect the work that has been done since its appointment, and in the case of the Receiver, reasonable estimates of work to be completed until its discharge. The fees are commensurate with the tasks performed. I find them to be fair, reasonable and justified in the circumstances. See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45. There was a justification for the Receiver to retain new counsel for this motion when it was expected to be opposed by the Debtor. There does not appear to be any significant overlap in the work and fees as between the two law firms that were involved.
21. The approval of the First Report and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders. The statement of receipts and disbursements appears to be in order.
22. The Proposed Distribution (as defined in the First Report) is recommended by the Receiver on the basis of established priorities.

23. The Debtor acknowledges that it (or its principal) has received certain rent payments since the Receiver was appointed and does not object to the requested direction in the Ancillary Order for those to be paid to the Receiver.
24. The Receiver's administration is substantially complete, subject to completing the Transaction and attending to related administrative matters. To avoid the costs of making a further motion to the court to obtain the Receiver's discharge, the Receiver seeks an order now for it to be discharged upon the filing by the Receiver of a certificate confirming that the Receiver has completed the Remaining Duties (as defined in the First Report). This is appropriate in the circumstances.
25. The release of the Receiver provided for upon its discharge appropriately excludes gross negligence and willful misconduct, as is the practice of this court for these release orders.
26. The Approval and Vesting Order is consistent with the model order, with appropriate adjustments to reflect the particular circumstances of this case.
27. Orders (the AVO and Ancillary Order) to go in the forms signed by me today.

KIMMEL J.