

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

First Source Financial Management  
Plaintiff(s) Applicant  
AND  
2507448 Ontario Inc.  
Defendant(s) Respondent

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
S. Thom - for Receiver		
J. Lamy - for Applicant		
M. Milosevic - for Respondent.		

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

Motion by the Receiver for approval of an agreement of purchase and sale between the Receiver and 2562051 Ontario Inc. dated October 2, 2019 in respect of the property over which the Receiver was appointed.

The Applicant's application for the Receiver's appointment was commenced in January 2019. It was adjourned four times to permit the respondent debtor to obtain s.e. financing. Finally, on ~~April 26~~ <sup>May 3</sup>, 2019, and in the absence of any s.e. financing being obtained, Harvey J. appointed

2/19

Nov 1 / 19  
Date

Harvey J.  
Judge's Signature

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the Receiver, ~~Since~~ <sup>Since</sup> its appointment, the Receiver has taken steps to market and sell the Real Property (a mixed commercial use building at 581 Wellington Street West, in Toronto). On September 25, 2019, I approved a Sales Process which involved Avison Young, an experienced real estate brokerage firm. The Sales Process ran from August 13 to September 20, 2019. The Property was extensively marketed <sup>which</sup> and generated much interest. At the Offer Review Date, seven offers were received. After review, four offers were contacted and invited to improve or amend their offers and resubmit. Following the second round, three offers were contacted and invited to either improve their offering price or delete any conditions. The fifth offer also indicated it wished to resubmit. In the end, three of the four offers under consideration further amended their offers. Following review, the Receiver accepted the offer of the proposed purchaser and has entered into the Agreement of Purchase and Sale <sup>"dated October 2, 2019"</sup> which it seeks approval for.

The respondent has appeared at the hearing today

*[Handwritten Signature]*

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and requested that the proposed sale transaction not be approved. It submits that it has obtained financing sufficient to redeem the applicant's mortgage as well as enabling it to provide some monies to the 2<sup>nd</sup> and 3<sup>rd</sup> mortgagees and finish the proposed renovations to the building. It submits that the proposed sale, while sufficient to pay out the first, will only provide partial funds to the 2<sup>nd</sup> and nothing to the 3<sup>rd</sup>. It submits however, that its proposal and re-financing, in addition to giving the 2<sup>nd</sup> + 3<sup>rd</sup> mortgagees some funds, will enable construction to be completed which in turn will significantly (it is submitted) increase the value of the property. The problem with the respondent's submission is that all of the above information has come from counsel's submissions. There is no evidence before the court to confirm the re-financing or the alleged arrangements with the 2<sup>nd</sup> and 3<sup>rd</sup> mortgagees. Further, this is not a situation which has befallen the respondent recently. The respondent has had more than enough indulgences

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from both the applicant and this court to enable re-financing. It has not happened. Nor, in the absence of any evidence, do I find that it has occurred. Even if the evidence supporting the Respondent's submissions was before me, I would not interfere with the sale. Given the Receivership order together with the approval of the Sales Process which has been followed, a mortgagor has no right to redeem: See: B. M. Handelman Investments Ltd. v. Man Properties Inc. [2009] O.T. No. 3044 (S.C.J.) at paras. 21-22; Business Development Bank of Canada v. Marlwood Golf & Country Club Inc. [2015] O.T. No. 3283 (S.C.J.) at para. 25.

The Respondent relies on Cameron v. Bank of Nova Scotia, [1981] N.S.J. No. 43 (N.S.C.A.) for the proposition that in certain circumstances the court will not approve a sale where it is not in the best interest of either the creditors or the owner. I don't disagree with that. The facts in Cameron are very different than before me. Specifically, there is no evidence from the

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respondent, to permit me to find the proposed sale is not in the best interest of the creditors as the respondent.

Based on the material filed, I am satisfied that the proposed sale, which is in excess of the appraised value, should be and is approved and a vesting order should be granted. The Soundair principles have all been met in this case.

The order with respect to removal of the respondent's personal property by Nov 15, 2019 is unopposed and is therefore granted.

Finally the Second Report is approved as well as the fees and disbursements of the Receiver and its counsel from August 31, 2019 to September 30, 2019.

Orders signed by me.

In light of the sensitive information concerning the sale process and the APS, Confidential Appendix "I" to the 2<sup>nd</sup> Report is sealed until completion of the sale.

Seira Club principles have been met.