



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: **BK-24-00208718-OT31** DATE: **December 03, 2024**

NO. ON LIST: 3

TITLE OF PROCEEDING: **IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR**

BEFORE: **Justice PENNY**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Lauren Archibald	Counsel for The Fuller Landau Group	lauren.archibald@nortonrosefulbright.com

For Other:

Name of Person Appearing	Name of Party	Contact Info
David Im	Court Appointed Secured Lender in a related matter for Balboa Inc. et al	dim@chaitons.com
Fred Tayer	Counsel for the Interim Receiver, TDB Restructuring Limited	fred@fredtayar.com
Tanya A. Pagliaroli	Counsel for the Debtor, Dylan Suitor	tanya@taplaw.ca
Jeff Berger	TDB Restructuring Limited, Interim Receiver of Dylan Suitor	jberger@tdbadvisory.ca

ENDORSEMENT OF JUSTICE PENNY:

[1] This motion is brought by the Debtor for approval of a sale of a residential property at 362 Donovan St. in Sudbury, Ontario (the Property). The motion arises in unusual circumstances. Fuller Landau is Receiver of The Lion's Share Group Inc. Lion's Share loaned money to what is described as the Balboa Borrowers. The Debtor is one of the four principals of the Balboa Borrowers. Balboa is in CCAA proceedings. The Monitor is KSV.

[2] Fuller Landau, as Receiver of Lion's Share, instituted proceedings seeking a bankruptcy order against the Debtor. The bankruptcy order is contested. Argument is scheduled for February 25, 2025. Fuller Landau also sought the appointment of an interim receiver under s. 46 of the BIA. That order was granted by Osborne J. on October 7, 2024. The Interim Receiver is TDB Restructuring Limited. One of the entities over which TDB was appointed Interim Receiver is Upgrade Housing Inc. Upgrade is owned by the Debtor. Upgrade owns the Property.

[3] The Debtor is in the business of renovating, leasing and selling distressed residential real estate. The Property was purchased in 2019 for \$183,000. The Property has been listed since February 2019 at prices ranging from \$349,000-\$424,900. The property is listed by an independent real estate agent, Mr. McBain. There is an appraisal, from August 2024. The appraisal was commissioned by an independent third-party mortgage investment company and approved by a certified real estate appraiser. The evidence is that these entities and persons are all arm's-length vis-a-vis the debtor and Upgrade. The purchaser of the Property, again based on the evidence of the Debtor, is likewise an arm's-length party. The purchase price of \$390,000 exceeds the appraised value, falls within the range of listing prices and represents the best offer received for the Property. There is a first mortgagee, Lift Capital Incorporated. KSV, Fuller Landau and TDB are all aware of the proposed sale and of this motion.

[4] No one appeared today to oppose approval of this transaction. TDB recorded certain concerns arising from the preliminary findings of Justice Osborne in his October 7 endorsement. Mr. Tayar, who represents TDB, however, candidly acknowledged that TDB had no information that anything said or represented by the Debtor was untrue or incorrect. TDB does not oppose the transaction but makes the point that it is no position to positively affirm that the proposed sale meets the independence and prudence tests normally applied to sale approval motions in the receivership context.

[5] I have two concerns. First, Upgrade, and likely other entities owned or controlled by the Debtor and subject to the interim receivership, owns many properties. Approval of individual sales on a piecemeal basis is the very antithesis of the intention of Justice Osborne's appointment of TDB. It could lead to a proliferation of motions, needlessly take up scarce court resources and cause all parties to incur needless cost. The Debtor's counsel acknowledges that this motion should not become a template for a protocol going forward. I agree. I cannot image circumstances in which the court would be prepared to supervise the conduct of the Debtor's business, pending the bankruptcy application, in this way. Counsel for the Debtor, Fuller Landau and TDB have agreed to have a discussion about how to deal with any additional sales opportunities pending the return of the bankruptcy motion. If an appropriate protocol cannot be agreed upon, parties shall return to court for further direction, preferably before Justice Osborne.

[6] My second concern is that, in addition to approval of the proposed sale, the Debtor also seeks approval of the proposal to pay the net proceeds of sale to Lift as the first in priority secured creditor. Lift is said to have valid and enforceable security and to be entitled to this distribution upon closing. What is missing, however, is an opinion of counsel (counsel who is independent of Lift) that the mortgage held by Lift represents valid and enforceable security which entitles Lift to payment of the net proceeds of sale.

[7] I am satisfied that the basic principles of sale approval summarized in the *Sound Air* case have been met. The Property has been exposed to the market for a sufficient period of time by an independent and established sales agent. The proposed transaction appears to be with an arms' length party. The sale price falls within the range of listing prices and exceeds the recent valuation. The sale is approved with the proviso that the court disapproves of a piecemeal approach to such approvals in the context of this case and expects the parties to determine how and when any other potential sales shall be managed pending February 25, 2025.

[8] As to the payment/distribution of proceeds, the Debtor/Upgrade is required to provide an independent opinion of counsel that the Lift mortgage represents valid and enforceable security entitling Lift to the payment

of the proceeds of sale on closing. This opinion shall be provided to Fuller Landau and to TDB and filed with the court (and uploaded to Case Center) before closing.

[9] Counsel shall confer on preparing the appropriate order and forward it to me, via my Registrar (if today) or via the Commercial List office (if after today).

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.