



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00730993-00CL

DATE: April 25, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING:

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC. v CBJ-FORT ERIE HILLS INC. et al

BEFORE: JUSTICE J DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Derek Harland DJ. Miller	Lawyers for Court Appointed Receiver.	ddharland@tgf.ca djmiller@tgf.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Bryan A. Tannenbaum Margarita Cargher	Proposed Receivers for TDB Restructuring Ltd.	btannenbaum@tdbadvisory.ca mcargher@tdbadvisory.ca

Other:

Name of Person Appearing	Name of Party	Contact Info
Adrienne Ho	Lawyer for the Receiver for KSV.	aho@airdberlis.com
Joshua Perlstein	Real Estate Agent for Lennard Commercial.	Realty.josh@lennard.com

ENDORSEMENT OF JUSTICE J DIETRICH:

Introduction

- [1] TDB Restructuring Limited as court-appointed receiver (the “**Receiver**”), of the assets, undertakings and properties of CBJ – Fort Erie Hills Inc. (the “**Debtor**”), including the property municipally known as 85-87 Crooks Street and 0 Thompson Road, Fort Erie, Ontario (the “**Real Property**”) seeks two orders today.
- [2] First, an approval and vesting order is sought (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement between the Receiver, and Dunsire Homes Inc., (the “**Purchaser**”), dated March 28, 2025 (the “**APS**”); and (ii) authorizing the Receiver to make a distribution from the proceeds of the Transaction to Hillmount Capital Mortgage Holdings Inc. (“**Hillmount**”) as full repayment of the indebtedness owing by the Debtor to Hillmount (the “**Distribution**”).
- [3] Second, an ancillary order is sought (i) approving the First Report of the Receiver dated April 10, 2025 (the “**First Report**”) and the Receiver’s activities described therein; (ii) approving the fees and disbursements of the Receiver and its counsel as detailed in the Fee Affidavits appended to the First Report; and (iii) sealing the Confidential Appendices to the Second Report.
- [4] No objections to any of the relief sought were raised today.
- [5] Defined terms not otherwise defined herein have the meaning provided for in the Receiver's factum filed in support of this motion.

Background

- [6] The Receiver was appointed by Order dated December 19, 2024, on application of Hillmount. As of April 25, 2025, the amount owing to Hillmount under its first-ranking mortgage is \$7,923,102.54, with interest continuing to accrue.
- [7] The Debtor is the registered owner of the Real Property, which consists of undeveloped vacant land formerly operated as a golf course. The Town of Fort Erie has granted draft plan approval for the development of a residential subdivision comprising 79 single-family detached homes, 102 semi-detached homes, 200 townhomes, and 800 apartment unit.

- [8] Following the Receiver's appointment, the Receiver undertook steps to implement a process to market and sell the Real Property. The Receiver contacted various departments at the Town of Fort Erie, including planning, tax, and municipal services, to obtain up-to-date zoning, tax, and development-related information and to confirm the status of the existing approvals. Although the Receiver also sought information from the Debtor, which in large part was not provided, Hillmount provided the Receiver with a substantial volume of documentation relevant to the site, including planning materials, reports, and historical correspondence, which formed the basis for the Receiver preparing the data room and marketing materials.
- [9] In January 2025, the Receiver invited proposals from three established commercial real estate brokerages with experience in selling residential and development lands in Ontario. Two firms submitted proposals. In consultation with the Applicant, the Receiver selected Lennard Commercial Realty ("**Lennard**") as the listing brokerage.
- [10] On January 27, 2025, the Receiver entered into a multiple listing service agreement with Lennard.
- [11] Lennard and the Receiver jointly developed a marketing strategy, and Lennard formally launched the campaign on February 10, 2025.
- [12] The marketing activities undertaken by Lennard included, among other things: (a) preparing a brochure / teaser letter that was mailed out along with the Confidentiality Agreement on a targeted basis; (b) posting on social media (LinkedIn) which received over 2,000 impressions in the first week; (c) delivering e-mails to Lennard's distribution list of approximately 3,000 parties with 550 targeted developers; (d) conducting targeted outreach by calling approximately 175 active developers in Southwestern Ontario; (e) listing the Real Property on Lennard's website and on MLS; (f) publishing advertisements in the Novae Res Urbis – City of Toronto Edition publication on February 26th, 2025, and The Globe and Mail published on February 20, 2025, and March 13, 2025; and (g) establishing an electronic data room to provide access to confidential information pertaining to the Real Property to parties who had executed a Confidentiality Agreement.
- [13] Over the course of the marketing process, 25 interested parties executed Confidentiality Agreements and were granted access to the data room.
- [14] The Receiver set a bid deadline of March 25, 2025, as recommended by Lennard to allow sufficient time for canvassing and due diligence. By that date, the Receiver had received four formal offers. After evaluating the offers, the Receiver determined that the offer submitted by the Purchaser represented the highest and best bid in the circumstances.
- [15] On March 28, 2025, the Receiver executed the APS with the Purchaser on terms substantially the same as the form provided to all bidders through the data room.

Issues

[16] There are four issues to be determined:

1. Should the Transaction be approved;
2. Should a distribution of sale proceeds from the Transaction to Hillmount be approved;
3. Should the Court should approve the activities of the Receiver as well as the fees and disbursements of the Receiver and its counsel; and
4. Should the Court approve the sealing of Confidential Appendices to the First Report?

Analysis

Approval of the Transaction

[17] The principles to be applied when determining whether to approve a sale transaction were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* (“*Soundair*”): (a) whether the receiver has made sufficient effort to obtain the best price and has not acted improvidently; (b) the efficacy and integrity of the process by which offers have been obtained; (c) whether the interests of all parties have been considered; and (d) whether there has been unfairness in the working out of the process.

[18] I am satisfied that the *Soundair* principles have been met.

[19] The Receiver solicited listing proposals from established commercial real estate brokerages with experience in selling residential and development lands in Ontario. There was an extensive marketing process undertaken by Lennard, the chosen real estate brokerage, that broadly canvassed the market and ultimately resulted in 25 interested parties executing Confidentiality Agreements and being provided with access to the data room.

[20] In the views of Lennard and the Receiver, the Real Property was exposed to the market for a sufficient period of time for prospective purchasers to make an offer. The Receiver does not believe that further exposure to the market would result in a superior offer.

[21] The Receiver received four offers for the Real Property and the APS represents the best offer for the Real Property, including the highest purchase price. The terms of the APS are typical for sale by a receiver with respect to real property. The APS does not include any conditions which are expected to delay closing.

[22] The first mortgagee and Applicant in the receivership proceeding supports the Transaction.

[23] Accordingly, the Transaction is approved.

Distribution

- [24] After allocating certain proceeds of sale to priority tax reserves, the Receiver intends to repay Hillmount the \$250,000 it advanced (with interest) under the Receiver's Borrowing Charge and then, subject to the requested distribution order being made, satisfy all amounts owing to Hillmount under its Mortgage. All remaining funds will be held by the Receiver pending further order of the Court.
- [25] The Receiver has obtained an independent legal opinion from Loopstra Nixon LLP opining that, subject to the usual assumptions and qualifications, Hillmount's Mortgage constitutes a valid and enforceable first-ranking charge against the Real Property.
- [26] Accordingly, I am satisfied the proposed distribution to Hillmount is appropriate and it is approved.

Approval of First Report, Statement or Receipts & Disbursements, Activities and Fees

- [27] The Receiver is also seeking approval of the First Report and the activities of the Receiver set out therein. The activities of the Receiver described in its First Report were necessary and undertaken in good faith and are approved as is that statement of receipts and disbursements attached thereto. The draft order provides for the typical language providing on the Receiver is entitled to rely on such approval.
- [28] The fees and disbursements of the Receiver and its legal counsel, as set out in the First Report are also reasonable in the circumstances and are approved.

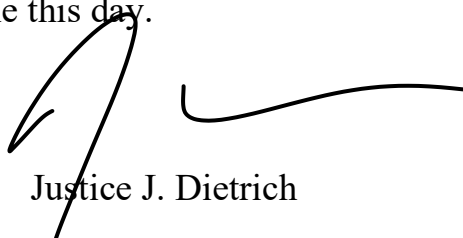
Limited Sealing

- [29] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Real Property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the First Report (being a summary of offers received and an unredacted version of the APS) meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the receiver to file a hard copy of the confidential appendices with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.

Disposition

- [30] Orders to go in the forms signed by me this day.

April 25, 2025



Justice J. Dietrich