



ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00713245-00CL

DATE: April 14, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: BALBOA INC v THE FULLER LANDAU GROUP INC et al
BEFORE OSBORNE
JUSTICE:

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Joseph Bellissimo Stephanie Fernandes	Counsel for the Monitor	jbellissimo@cassels.com sfernandes@cassels.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
George Benchetrit	Counsel for the Secured Lenders	george@chaitons.com
Kyle Plunkett	Counsel to DIP Lender	kplunkett@airdberlis.com
Lauren Archibald	Receiver of the Lion's Share Group Inc.	Lauren.archibald@nortonrosefulbright.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Sieradzki Nathalie El-Zakhem	Monitor - KSV Restructuring Inc.	dsieradzki@ksvadvisory.com nelzakhem@ksvadvisory.com
Mario Forte	Counsel for the Unsecured Lenders	forte@gsnh.com

ENDORSEMENT of OSBORNE, J.:

1. The Monitor seeks a Second Omnibus Credit Bid Vesting Order providing for the approval of the sale Transactions contemplated by the Sale Agreements between, in each case, an Applicant, as vendor, and the Purchaser all substantially in the form of the Sale Agreement attached at Appendix “G” to the 12th Report of the Monitor dated April 7, 2025, together with an order vesting in the Purchasers listed on Schedule “A” to the Second Omnibus Credit Bid Vesting Order, the applicable Applicant’s right, title and interest in and to the applicable Purchased Properties.
2. The Monitor also seeks a Second DIP Allocation and Orderly Liquidation Mechanics Order extending the stay of proceedings to and including August 31, 2025, approving the Second DIP Allocation substantially in the form attached at Appendix “J” to the 12th Report, authorizing the Monitor to accept and complete sales of any Liquidation Portfolio Property in accordance with the proposed Orderly Liquidation Mechanics, and approving the 12th Report, the activities of the Monitor referred to therein, and the fees and disbursements of the Monitor and its counsel from February 1, 2025 through March 31, 2025.
3. The Service List has been served. In addition, and as confirmed by counsel to the Monitor in Court today, all other affected parties have also been served or received formal Notice of these motions. Those parties include mortgagees and other rights and encumbrance holders who would or could be affected by the vesting and expunging relief being sought today.
4. No party has filed materials or even indicated informally to the Monitor any intention to oppose the relief sought today. It is supported or unopposed by the Secured Lenders, the Unsecured Lenders, the DIP Lender, and the Court-appointed Receiver in the Lion’s Share Group proceeding.
5. Defined terms in this Endorsement have the meaning given to them in the motion materials and in particular the 12th Report, unless otherwise stated.
6. I am satisfied that the proposed relief is appropriate and should be granted.
7. At the outset, I make a general observation that the balancing necessary in this unique proceeding strikes to protect to the greatest extent possible the rights of those affected, while minimizing professional fees and transaction costs related to the conveyance and monetization of such a significant number of individual properties so as to maximize recoveries to the greatest extent possible in very challenging circumstances. The Applicants initially had approximately 407 properties. The December 6, 2024 Omnibus Credit Bid Vesting Order addressed credit bid transactions in respect of 323 properties, including the assignment of tenant leases. The relief sought on February 27, 2025 and today effectively deals with the balance of the properties.
8. The background to and context for the motion today and the relief sought is fully set out in the 12th Report as well as earlier Reports and my Endorsements already made in this proceeding, including but not limited to my Endorsement and Credit Bid/Liquidation Process Order of February 27, 2025.
9. The Secondary Credit Bid mechanics were largely the same as those used in the initial credit bid process set out in the Restructuring Term Sheet and approved by this Court on August 30, 2024 subject to one change as set out in the 12th Report.

10. The Monitor received Secondary Credit Bid APAs from 12 mortgagees. Those APAs require that each Purchaser assume any tenant leases on closing, of which, according to the information of the Monitor, there are seven.
11. The forms of Leases do not contain any restrictions on landlord rights to assign. However, The Monitor believes it is important to provide purchasers and tenants with certainty as to the state of the leases, but also that it is impractical to obtain executed consents or acknowledgements from the tenants under the Leases in the circumstances, and particularly given the expedited timeframe contemplated by the Secondary Credit Bid APAs.
12. Rather than developing 12 individual vesting orders for each Second Omnibus Credit Bid APA, the Secured Lender Representative Counsel, in consultation with the Monitor and the Monitor's counsel, developed the proposed order being sought today to cover all APAs in a manner consistent with the Omnibus Credit Bid Vesting Order and the Credit Bid Vesting Order previously approved by this Court. The draft order sought today includes revisions requested by the Land Registry Services Branch already incorporated into the Omnibus Credit Bid Vesting Order.
13. For all of these reasons, and the reasons set out in the 12th Report, I am satisfied that the Transactions contemplated by the Secondary Credit Bid APAs should be approved pursuant to section 36 of the *CCAA*. I am satisfied that the factors set out in section 36(3) as well as the *Soundair Principles*, all of which I have considered, have been satisfied here.
14. Reviewing these Transactions as a whole, I am satisfied that the relief sought is appropriate, fair and reasonable, particularly when considering the economic costs of liquidation of the assets here. The process leading to the proposed Transactions has been reasonable, the Monitor has filed with the Court a report giving its opinion that the proposed relief would be more beneficial to the creditors than a sale or disposition under a bankruptcy, the creditors have been consulted, and the effects of the proposed Transactions on the creditors and other interested parties favour the relief sought. Finally, the consideration to be received is fair and reasonable, in the circumstances, taking into account the market value of the properties.
15. The Monitor is not aware that any Credit Bid Purchasers are related to the Applicants with the result that I need not address the section 36(5) factors here.
16. I am also satisfied that the Leases should be assigned pursuant to section 11.3 of the *CCAA*, having considered the factors set out in sections 11.3(3) and (4). All of those factors, as summarized above and more fully set out in the 12th Report, support the proposed lease assignments.
17. The Monitor also seeks approval for the Second DIP Allocation in a manner consistent with the first DIP Allocation and Order related to the proceeds of the initial 321 credit bid transactions used to repay the Harbour DIP Facility. The same methodology was used for the purposes of calculating the amount owing under the Viscount DIP Term Sheet, which has been allocated by the Monitor as to property-specific costs such as renovations and property taxes to each applicable Property, and general costs, such as professional fees associated with these proceedings, allocated over the Portfolio in proportion to the acquisition cost of each Property.
18. The proposed Second DIP Allocation, totaling \$5 million, is equitable and consistent with earlier cases in which DIP funding is typically allocated as to general costs across all properties and property-specific costs to each corresponding applicable property, using acquisition cost as the basis for allocation.
19. I am satisfied that the Second DIP Allocation should be approved pursuant to my discretion granted in section 11 of the *CCAA*. Moreover, the proposed cost allocation here is consistent with that set out in *Royal Bank of Canada v. Atlas Block Co. Limited*. The same factors have been applied here, and they are satisfied for the reasons set out above and in the 12th Report.

20. Subject to Court approval and completion of the 12 secondary credit bid transactions, the Liquidation Portfolio Properties will consist of 74 properties, and that process is already underway. The proposed Orderly Liquidation Mechanics are set out in the 12th Report. The objective is to allow the Monitor to complete sales of Liquidation Portfolio Properties without further approval of the Court to be sought and provided if appropriate on an individual or “one-off” basis, provided the Monitor has the consent of those stakeholders or stakeholder representatives who have economic interests in the proceeds. The idea is to avoid the staggering costs, relative to recoveries, with what would be dozens and dozens of Court appearances.
21. I am also satisfied that the Orderly Liquidation Mechanics are appropriate and should be approved. The *Nortel* factors, while set out prior to the 2009 amendments to the *CCAA*, continue to apply to a determination of whether a sales process should be approved: see *Brainhunter*. While section 36(3) does not technically apply at this stage, they are informative, and I have considered the *Nortel* criteria as against the additional criteria set out in that subsection and am satisfied that they are met here. There is no alternative that is not more impractical and more inefficient given the number of remaining properties.
22. The Monitor submits, and I accept, that the proposed Orderly Liquidation Mechanics are reasonable and appropriate in the circumstances.
23. I am also satisfied that the proposed stay of proceedings should be extended through and including August 31, 2025, pursuant to section 11.02(2) of the *CCAA*. Such an extension is necessary and appropriate, the Monitor is acting in good faith and with due diligence, the time is required to close the Secondary Credit Bid transactions and implement the Orderly Liquidation Plan, the Monitor believes that no creditor will be materially prejudiced as a result of the extension, and the Cash Flow Forecasts project sufficient liquidity to fund operations and costs through the proposed extension period.
24. Finally, the 12th Report and the activities of the Monitor described therein are appropriate, reasonable and are approved. The activities are consistent with the mandate given to the Monitor in the original appointment order, as expanded and amended, and have been accretive to the maximization of value in this difficult process.
25. The fees of the Monitor and its counsel reflect activities undertaken consistent with the activities of the Monitor described above. The fees for those activities are reasonable, appropriate and consistent with market rates. Most fundamentally, I am satisfied that the fees and disbursements meet the standard of the “overriding principle of reasonableness” given the nature, extent and value of the assets being administered, the complications, the time, diligence and thoroughness displayed, responsibilities assumed and results achieved. The fees and disbursements sought are fully set out in the fee affidavits, attached as Appendices “O” and “P” to the 12th Report. See: *Bank of Nova Scotia v. Diemer*.
26. For all of these reasons, the relief is granted.
27. Both orders to go in the form signed by me today which have immediate effect without the necessity of issuing and entering.

A handwritten signature in green ink, reading "Osborne J.", is positioned above a horizontal line.

Justice Osborne

