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File Reference: SM052826-7

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June 30, 2025

Via Hand Delivery & Email

The Honourable Justice Darlene Jamieson
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

Justice Jamieson:

Re: In the matter of an Application by Blue Lobster Capital Limited et al. for relief under s. 11 of the *Companies' Creditors Arrangement Act* (the "CCAA") – Hfx No. 538745

Motion: Monday, July 7, 2025 at 9:30 a.m.

1. We are counsel for Coast to Coast Marketing Ltd. ("**Coast**") and James Roue Beverage Company Ltd. ("**JRBC**" and collectively, the "**Coast Purchasers**") in connection with an asset purchase agreement dated May 9, 2025, as amended from time to time (the "**Coast APA**"), between the Coast Purchasers and KSV Restructuring Inc., in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") of Blue Lobster Capital Limited, 3284906 Nova Scotia Limited, 3343533 Nova Scotia Limited, and 4318682 Nova Scotia Limited (collectively, the "**Applicants**"), whereby the Coast Purchasers agreed to purchase the business and assets of the Applicants described in the Coast APA (the "**Coast Assets**").

2. Please accept the following submissions on behalf of the Coast Purchasers in relation to the motion scheduled for July 7, 2025 at 9:30 a.m.

INTRODUCTION

3. The purpose of this letter is to set forth the Coast Purchasers' position concerning: (i) the motion by the Monitor for, among other things, the approval of the Coast APA and the transactions contemplated therein (the "**Sale Approval Motion**"); and (ii) the motion by the Applicants to, among other things, terminate the proceedings under the CCAA (the "**CCAA Termination Motion**"). As set out in the Monitor's Fourth Report dated June 17,

2025, the Coast APA is the result of the Coast Purchasers' having been selected as a successful bidder pursuant to the sale and investment solicitation process ("**SISP**") approved in these CCAA proceedings. The Applicants' motion will have the effect of terminating the Coast APA.

4. The Coast Purchasers remain ready and willing to complete the Coast APA and the purchase of the Coast Assets. The Coast Purchasers participated in the SISP in good faith and held a reasonable expectation (since being informed the Monitor that they were a successful bidder in the SISP) that they would be able to complete the purchase of the Coast Assets. The Coast Purchasers have proceeded on this basis since being selected as a successful bidder in the SISP.

5. The Coast Purchasers submit that it is appropriate for this Honourable Court to consider their interests in considering the Sale Approval Motion and CCAA Termination Motion.

SALE APPROVAL MOTION

6. The principles for a Court to consider on a motion for the approval of a sale of assets in an insolvency proceeding are well established and set out in *Royal Bank v. Soundair Corp.*, 1991 CarswellOnt 205 (ON CA) (**Monitor's Book of Authorities, Tab 1**). These principles are: (i) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers have been obtained; and (iv) whether there has been unfairness in the working out of the process. In discussing the second factor, the interests of all parties, Galligan J.A. made the following comments in *Soundair*:

> *39 It is well established that the primary interest is that of the creditors of the debtor: see Crown Trust Co. v. Rosenberg, supra, and Re Selkirk, supra (Saunders J.). However, as Saunders J. pointed out in Re Beauty Counsellors, supra at p. 244 [C.B.R.], "it is not the only or overriding consideration."*
>
> *40 In my opinion, there are other persons whose interests require consideration. In an appropriate case, the interests of the debtor must be taken into account. I think also, in a case such as this, where a purchaser has bargained at some length and doubtless at considerable expense with the receiver, the interests of the purchaser ought to be taken into account. While it is not explicitly stated in such cases as Crown Trust Co. v. Rosenberg,*

> *supra, Re Selkirk (1986), supra, Re Beauty Counsellors, supra, Re Selkirk (1987), supra, and (Cameron), supra, I think they clearly imply that the interests of a person who has negotiated an agreement with a court-appointed receiver are very important.*
>
> [Emphasis added]

7. While the *Soundair* factors focus on the merits of a proposed sale before a Court, as the Applicants' motion will have the effect of terminating Coast APA it is respectfully submitted that such factors are applicable in the circumstances and that the interests of the proposed purchasers be considered.

8. In *Business Development Bank of Canada v. Marlwood Golf & Country Club Inc.*, 2015 ONSC 3909 (**Appendix 1**), the Ontario Superior Court of Justice considered a sale approval motion in a receivership which was opposed by the first mortgagee, who instead sought to redeem their mortgage. The sale was approved and the motion to redeem the mortgage was dismissed. In reaching this decision, the Court noted:

> *26 While the primary concern of a receiver is the protecting of the interests of creditors, a secondary but important consideration is the integrity of the process by which the sale is effected. See Galligan J.A. in Soundair. Moreover, the interests of a purchaser in a property run sales process by a receiver are to be considered. In B&M Handelman Pepall J. also stated:*
>
> > *27 The Receiver considered the interests of all parties. As Galligan J.A. stated in Soundair, it is well established that the primary interest is that of the creditors of the debtor but other persons' interests require consideration as well. This may include the interests of a purchaser such as Mr. Bharwalia who has negotiated an agreement with a Court appointed receiver.*

9. As noted above, the Coast Purchasers remain ready and willing to close the Coast APA and have proceeded in good faith and due diligence since being selected as successful bidder in the SISP.

CCAA TERMINATION MOTION

10. If the Applicants' CCAA Termination Motion is successful, the Coast Purchasers submit that they ought to be compensated by the Applicants for their time, costs and expenses incurred in negotiating the Coast APA and working towards closing. In *Peakhill Capital*

Inc. v. 1000093910 Ontario Inc., 2024 ONCA 584 (**Monitor's Book of Authorities, Tab 14**), the Ontario Court of Appeal ordered that a stalking horse bidder in a receivership sales process was entitled to compensation for costs thrown away in the sales process when an "11th hour" motion by the debtor to redeem its security was approved:

> *15 There is no suggestion that the sale process failed to comply with the Soundair principles. In our view, to permit a debtor to redeem at the 11th hour and, at the same time, to reject a receiver's AVO motion without requiring the debtor, as a condition of redemption, to compensate the successful bidder in a Soundair-compliant court-approved sale process for its costs thrown away in that process would amount to sanctioning an abuse of the court-supervised receivership process, thereby undermining the integrity of that process.*

11. The Coast Purchasers submit that this reasoning is equally applicable with respect to the Coast APA.

12. The Coast Purchasers were informed by the Monitor that they were a successful bidder pursuant to the SISP on May 29, 2025. Since then, their activities have included:

    (a) negotiating the Coast APA;

    (b) completing their due diligence of the Coast Assets, including a site visit and meetings with employees;

    (c) preparing a business plan for the Coast Assets and business, including discussions with potential vendors and partners; and

    (d) engaging legal counsel to complete legal due diligence of the Coast Assets and to close the Coast APA (including the incorporation of a new company to take title to the Coast Assets).

13. The Coast Purchasers have expended significant time and effort undertaking the above-noted activities and have incurred out-of-pocket expenses. A summary of the Coast Purchasers' costs in completing the above noted activities is as follows:

    (a) Coast personnel have spent approximately 30 hours from June 3 to June 28 on activities in connection with the Coast APA, valued at approximately $3,000;

(b) JRBC personnel have spent approximately 30 hours from May 29 to June 28 on activities in connection with the Coast APA, valued at approximately $3,000; and

(c) the Coast Purchasers have incurred legal fees of approximately $15,300 (inclusive of HST and disbursements) from May 29 to June 26 in connection with the Coast APA.

14. In addition to the foregoing costs and expenses, the Coast Purchasers have incurred: (i) costs and expenses prior to May 29, 2025 in connection with the SISP; (ii) expenses for travel, bank fees, etc., which are not summarized above (and are not substantial in amount); and (iii) costs in connection with the Sale Approval Motion and CCAA Termination Motion, which costs the Coast Purchasers continue to incur.

15. The Coast Purchasers will submit a detailed breakdown of the above-summarized time, costs and expenses incurred to date to the Monitor, and further details can be made available to the Monitor and Applicants upon reasonable request.

16. The Coast Purchasers submit that their time, costs, and expenses incurred in connection with the Coast APA were reasonably incurred as:

(a) While the Coast APA is conditional upon Court approval, it was not unreasonable for the Coast Purchasers to expect that the Coast APA be approved by this honourable Court given that it resulted from the Court-approved SISP, and the Coast Purchasers understood that the Monitor would recommend – and indeed the Monitor has recommended – that the Court APA be approved. In such circumstances, the Coast Purchasers reasonably believed that the Coast APA would be approved; and

(b) The closing date specified in the Coast APA is within three (3) business days following the issuance of the sale approval order (or such other date as agreed to by the parties). While the Coast Purchasers have discussed with the Monitor the possibility of extending this date for a short time to allow for, among other things, an accounting of the purchased assets necessary to complete the closing, this period was unlikely to be sufficient for the Coast Purchasers to close the transaction in a commercially viable manner. Accordingly, the Coast Purchasers

could not simply wait until after the Coast APA was court approved to begin working towards closing and to prepare to operate the Coast Assets and business upon closing.

CONCLUSION

17. The Coast Purchasers wish to complete the transaction contemplated by the Coast APA. However, in the event the CCAA Termination Motion is approved, the Coast Purchasers respectfully submit that, as a condition of such approval, they be compensated for their reasonable time, costs and expenses incurred in connection with the Coast APA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

David Wedlake

RDW/wmi/lms

c. Service List

2015 ONSC 3909
Ontario Superior Court of Justice [Commercial List]

Business Development Bank of Canada v. Marlwood Golf & Country Club Inc.

2015 CarswellOnt 9453, 2015 ONSC 3909, 255 A.C.W.S. (3d) 896, 27 C.B.R. (6th) 166

Business Development Bank of Canada, Applicant and Marlwood Golf & Country Club Inc., Respondent

Newbould J.

Heard: June 15, 2015
Judgment: June 22, 2015
Docket: CV-15-10878-00CL

Counsel: Wojtek Jaskiewicz, Bobby H. Sachdeva for Receiver, BDO Canada Limited
Anthony O'Brien for Applicant
R. Graham Phoenix for T.P.C.@Marlwood Inc.
Tony N. Nguyen for Respondent

Subject: Contracts; Corporate and Commercial; Insolvency; Property

Related Abridgment Classifications

Debtors and creditors

VII Receivers
VII.6 Conduct and liability of receiver
VII.6.a General conduct of receiver

Real property

VIII Mortgages
VIII.5 Redemption
VIII.5.d When redemption available
VIII.5.d.iii Miscellaneous

Headnote

Real property --- Mortgages — Redemption — When redemption available — Miscellaneous

Mortgagor mortgaged golf course — Mortgagor defaulted on mortgage — Receiver was appointed and undertook sales process which resulted in acceptance of successful bid — Principals of mortgagor allegedly threatened bidders — Receiver brought motion to approve sale — Mortgagor brought motion for permission to redeem mortgage — Receiver's motion granted; mortgagor's motion dismissed — Redemption of mortgage in circumstances would interfere with integrity of sales process — Sales process was reasonable and appropriate — Mortgagor did not establish that it came to court with clean hands — Mortgagor had not acted in good faith — Sale approved.

Debtors and creditors --- Receivers — Conduct and liability of receiver — General conduct of receiver

Mortgagor mortgaged golf course — Mortgagor defaulted on mortgage — Receiver was appointed and undertook sales process which resulted in acceptance of successful bid — Principals of mortgagor allegedly threatened bidders — Receiver brought motion to approve sale — Mortgagor brought motion for permission to redeem mortgage — Receiver's motion granted; mortgagor's motion dismissed — Redemption of mortgage in circumstances would interfere with integrity of sales process — Sales process was reasonable and appropriate — Mortgagor did not establish that it came to court with clean hands — Mortgagor had not acted in good faith — Sale approved.

Table of Authorities

Cases considered by *Newbould J.*:

Ron Handelman Investments Ltd. v. Mass Properties Inc. (2009), 2009 CarswellOnt 4257, 55 C.B.R. (5th) 271 (Ont. S.C.J. [Commercial List]) — considered
Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — followed

MOTION by receiver to approve sale of property; MOTION by mortgagor for permission to redeem mortgage.

***Newbould J.*:**

1 The receiver moved for approval of a sale transaction in which an 18 hole golf course property in Wasaga Beach was sold to a purchaser named the Smardenka Group and then assigned to T.P.C.@Marlwood Inc. The approval was opposed by the respondent, the first mortgagee of the property, who now wishes to redeem the first mortgage and has brought a motion for that relief. At the conclusion of the hearing I granted the motion of the receiver approving the sale and dismissed the motion by the respondent, with reasons to follow. These are my reasons.

2 Marlwood was operated by Trilinks Golf Limited in conjunction with another golf course in Wasaga Beach called the Links at New England Village. Marlwood, Trilinks and the Links are all related and owned by Baywood Homes Partnership. The receiver was advised that Trilinks and Baywood were experiencing cash flow difficulties in 2014. Baywood entered into an agreement under which a third party named Simmons took possession of Marlwood late in the 2014 golf season and operated the golf course. During the winter of 2014-15 Marlwood and Simmons had a falling out and no utilities were paid.

3 The first mortgage by Marlwood to BDC was made in 2007 for $2.6 million. It went into default on July 31, 2014. Demand by BDC on the first mortgage was made on October 9, 2014.

4 On February 17, 2015 BDC applied for the appointment of a receiver of the property of Marlwood. By that date there were no services to the Marlwood clubhouse and all leased golf carts and turf equipment had been removed by the lessors as payments for leased equipment and utilities had not been made. The golf course superintendent had also not been paid. Simmonds had offered memberships for 2015 to the members of Marlwood and money from the members who accepted had been deposited into a Marlwood account.

5 On February 17, 2015 Justice Spence adjourned the BDC application for the appointment of a receiver to March 3, 2015 and appointed BDO as a monitor of the property of Marlwood. On March 3, 2015 Justice McEwen continued the appointment of BDO as monitor, ordered a $25,000 forbearance fee to be paid by Marlwood and ordered that Marlwood sign a consent to the appointment of a receiver to be held in escrow until March 31, 2015 subject to terms including the right of BDC to act on the consent if the second mortgagee failed to consent by May 6, 2015 to the terms of a refinancing of the first mortgage proposed by Toronto Capital Corp.

6 The second mortgagee is Romspen Investment Corporation which holds a mortgage for $55 million registered on July 9, 2014. It is a collateral mortgage and part of a larger security package in which Romspen has first mortgage security over several other pieces of land including adjacent development land and another golf course. Romspen failed to consent to the refinancing of the BDC first mortgage by May 6, 2015. Accordingly BDO was appointed receiver of the property on May 12, 2015. Marlwood did not oppose the appointment of BDO as receiver. In its motion material before me, Marlwood requested an order setting aside the receivership order, but this was abandoned at the hearing.

7 The order appointing BDO as receiver authorized it to market the property. BDO determined that if it marketed the property quickly, it might be able to complete a sale of the assets by early June allowing a purchaser to operate the course during the busiest summer months of July and August. While it would have been possible for the receiver to operate the course for play during the sales process, it believed that the costs of doing so would not be recovered by income taken in before a sale could be achieved.

8 The receiver undertook a sales process. It is described in detail in the receiver's report at paras. 29 to 36. I am satisfied that it was a reasonable sales process and that the property was sufficiently exposed to the market for a reasonable period of

time to enable prospective bidders to assess the property and bid for it. Marlwood contends that the property was not listed through a "real estate agent experienced in golf courses". There is no evidence that such a real estate agent exists in the market or that such an agent would have achieved any better result than the receiver did. The receiver advertised twice in the Globe and Mail, local newspapers and online. It also engaged a Canadian firm with expertise in the golf industry which provided an electronic notice of the sale to approximately 4,000 industry parties drawn from its own data base. The sales process resulted in 60 enquiries. Twenty-two persons signed confidentiality agreements and obtained access to the receiver's data room. Two offers were received.

9 Marlwood contends that the sale was an improvident sale. I cannot so find based on the evidence. BDC obtained an appraisal from an accredited appraiser with an effective date of February 9, 2015. BDO obtained its own appraisal from an accredited appraiser with an effective date of February 24, 2015. The bid from the successful purchaser is very favourable compared to the appraisals. The appraisals appear to be thorough and well supported. The appraisers each opined that the highest and best use of the property was as a golf course.

10 Marlwood complains that it did not have access to the sale agreement or to the appraisals obtained by BDC and BDO. The sale agreement and appraisals have been filed under seal, as is usual in the Commercial List, in case any approved sale fails to close and the property must be again exposed to the market place. The integrity of any future sales process would be jeopardized if these documents were available to any future bidders. Marlwood had no special right to these documents. The receiver declined to provide these documents to Marlwood and I cannot quarrel with that decision. Indeed, Mr. Ralph Canonaco, a director of Marlwood and together with his brother Tony Canonaco the two principals of Marlwood, filed an affidavit in which he referred to the down payment on the sale and had no concern estimating the purchase price based on the amount of the deposit. This was not helpful to the process in the event that the sale were to fall through. In my view, the *Sierra Club* test has been met to require the documents to be filed under seal until the sales process has been completed and a sale to the successful purchaser has been completed.

11 Mr. Canonaco asserted in his affidavit that the Marlwood assets should be valued at approximately $2 million, much higher than his estimate of the sale price. There is no cogent evidence from him as to how he arrived at a $2 million value, nor have any appraisals been provided on behalf of Marlwood to support it. I do not accept his assertions of value as being in any way reliable.

12 I am satisfied that the sales process carried out by BDO in the circumstances was reasonable and appropriate and meets the test of the *Soundair* principles in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.).

13 Marlwood moved for an order permitting it to redeem the first mortgage. On June 9, 2015 BDC provided a mortgage discharge statement stating that the amount outstanding was $2,129,477, inclusive of principal, interest and costs of BDC incurred in enforcing its mortgage, including expected receiver costs. At the hearing, counsel for Marlwood stated that he had a certified cheque in hand to pay that amount. In all of the circumstances, I declined to permit the first mortgage to be redeemed. The essential reason is that it would upset the integrity of sales process undertaken by the receiver.

14 In its affidavit material sworn June 15, 2015, BDC takes the position that it supports the sale to the Smardenka Group. In argument, counsel for BDC said BDC believes in the court sales process but took no position on whether Marlwood should be entitled to redeem its mortgage. While it was not said, the fact that BDC would get less on the sale of the property than if its mortgage were immediately redeemed, may mean that BDC is satisfied that Marlwood and any guarantors would be good for the shortfall on the mortgage covenant.

15 Immediately after the appointment of the receiver, the principals of Marlwood told the receiver that it wished to redeem the BDC mortgage. The earlier proceedings in which the application to appoint a receiver had been adjourned featured some offer of financing from Toronto Capital Corp. that Romspen had not consented to. In mid-March, Marlwood advised it was in the process of arranging financing and the receiver provided an estimate of the amount required to redeem. However no redemption at that time took place.

16 During the currency of the sales process, the receiver was advised that the principals of Marlwood had reached a conditional agreement with BDC for an assignment of the BDC security. The receiver understood that this information had been communicated as fact within the local community by the principals of Marlwood and the receiver received many inquiries regarding the return of the golf course to Marlwood. Some parties interested in the assets of Marlwood asked the receiver about the rumours that Marlwood was going to take back its assets and what effect that would have on the sale process. The receiver believes that based on conversations with interested parties, a number of potential purchasers did not make bids because of the rumours of redemption and the activities of the principals of Marlwood. An e-mail from one interested party to the receiver of May 6, 2015 is troubling. It refers to threats from Mr. Ralph Canonaco that led to the third party backing away from a bid as he viewed the sales process as tainted. Mr. Canonaco did not deny this in his affidavit.

17 The receiver established May 8, 2015 as the deadline for bids to be submitted. On that day, just prior to the bid deadline of 12:00 noon, the receiver was advised by counsel for BDC that they had been contacted by counsel for Toronto Capital Corp., Marlwood's mortgage consultant, that funds were in place to redeem the mortgage. By this date the bid from both bidders, including the winning bid from the Smardenka Group, had been received. The bids were irrevocable until 5 p.m. on May 13, 2015 and after acceptance of the winning bidder, that bidder had 15 days to complete due diligence.

18 On May 13, 2015 at 10:45 am counsel for BDC advised the receiver that the deal with Toronto Capital Corp. was officially dead and that the solicitor for the investor group had been directed to return the funds to his clients. On that day the receiver contacted the two bidders and requested improved bids. The improved bids were received and on May 15, 2015 the bid by the Smardenka Group was accepted.

19 Mr. Alex Smardenka received what he described as two unsolicited visits. The first was from an Eva Ricci and Ralph Canonaco on May 31, 2015. Mr. Smardenka said that Mr. Canonaco strongly suggested that it was in their best interest to forge a partnership with him for the golf course or that Mr. Canonaco and his legal team would put a swift end to the Smardenka purchase of the golf course and that Mr. Canonaco would again be the owner. Mr. Smardenka took this as a threat. The second was the next day on June 1, 2015 from a Michael Sannella and a person named Frank who said they were from Toronto Capital Corp. working on behalf of Mr. Canonaco. They insisted that Mr. Smardenka enter into a partnership with Mr. Canonaco or that the Smardenka purchase of the golf course would not happen. Mr. Smardenka said he was rattled by their threats and so suggested they put their offer on paper for his lawyer to review. They said that this would not be proper in the eyes of the court and so refused to provide any offer. Mr. Sannella also said that for the deal to work Mr. Smardenka must hire his son for $150,000 per year and that his job would be to redevelop the golf course into residential. Mr. Sannella said that Baywood was not in the golf course business but in the land development business and that they would reclaim Marlwood with or without Mr. Smardenka. Mr. Smardenka recorded the visits in an e-mail to the receiver on June 1, 2015.

20 On June 2, 2015 the solicitors for BDO wrote by e-mail to Mr. Canonaco and Mr. Sannella of Toronto Capital Corp. and advised that the visits to Mr. Smardenka were a deliberate interference with the receiver's mandate and were designed to disrupt the receiver's intended action to sell the golf course. They suggested that the recipients of the e-mail feel free to have their lawyers get in touch if they wished to discuss the matter. No response to the e-mail was received back.

21 Mr. Canonaco admits he called and met with Mr. Smardenka. He puts a different light on it. He says that he presented Mr. Smardenka with an opportunity of a joint venture. He said at no material time was it his intention to undermine the receiver's efforts. He says that at the time, he disagreed with the receiver's plans to sell Marlwood to a third party and he believed that by working together with the purchaser, the affected stakeholders, being BDC, the receiver, Mr. Smardenka and Marlwood's shareholders and guarantors could benefit. He denies threatening Mr. Smardenka.

22 There has been no cross-examination on the affidavits of Mr. Smardenka or Mr. Canonaco and I hesitate to say too much about the evidence of the visit from Mr. Canonaco to Mr. Smardenka. I note, however, that no evidence from Eva Ricci was provided about that meeting to deny what Mr. Smardenka has stated took place. Even on Mr. Canonaco's version of his visit to Mr. Smardenka, it is an indication that Mr. Canonaco was prepared to interfere in the sales process. He could have waited until

the sale closed and then approached Mr. Smardenka. It is clear from his affidavit that Mr. Canonaco was against the receiver selling the property to a third party.

23 I accept the evidence of Mr. Smardenka as to what took place on June 1, 2015 in the visit from Mr. Sannella of Toronto Capital Corp. Neither Mr. Sannella nor Frank Mondelli of Toronto Capital Corp. gave any evidence denying what Mr. Smardenka says happened, and Mr. Canonaco did not say anything in his affidavit about the visit by Mr. Sannella or deny that Mr. Sannella was speaking for him. In his affidavit, Mr. Canonaco just said that when he met with Mr. Smardenka, he told him that Michael Sannella and Frank Mondelli of Toronto Capital Corp. would be calling to discuss the matter further. I take it from the evidence that Messrs Sannella and Mondelli were speaking on behalf of Mr. Canonaco. The threats made by them to Mr. Smardenka indicate a complete interference with the sales process undertaken by the receiver and indicate a lack of good faith on the part of Mr. Canonaco and Toronto Capital Corp.

24 At the hearing, counsel for Marlwood said that he had in his possession a certified cheque signed by the solicitors of Toronto Capital Corp. for the amount to redeem the BDO mortgage. He said that Romspen, the second mortgage, now was prepared to consent to the new financing. What caused the change from May 13, 2015 when Toronto Capital Corp. had said that the deal was dead was not explained by any evidence, nor was any evidence provided as to why any problems with the earlier Toronto Capital Corp. endeavours to provide financing to redeem the mortgage could not have been solved before the sales process was to be completed. The mortgage had been in default for nearly one year and, when Toronto Capital Corp. announced on May 13, 2015 that the refinancing was dead, the receiver was justified in completing the sales process and selling the property.

25 A mortgagee has no automatic right to redeem in these circumstances. In another case involving a mortgagee who on a motion to approve a receiver's sale applied for the right to redeem the mortgage in default, *Ron Handelman Investments Ltd. v. Mass Properties Inc.* [2009 CarswellOnt 4257 (Ont. S.C.J. [Commercial List])], Pepall J. (as she then was) denied the request to redeem. Her statements in that case are completely apt to the present situation. After referring to the terms of the receivership order, which were the same as in this case, she stated:

> **22** In the face of these provisions, Ms. Singh does not have an automatic right to redeem. A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

26 While the primary concern of a receiver is the protecting of the interests of creditors, a secondary but important consideration is the integrity of the process by which the sale is effected. See Galligan J.A. in *Soundair*. Moreover, the interests of a purchaser in a property run sales process by a receiver are to be considered. In *B&M Handelman* Pepall J. also stated:

> **27** The Receiver considered the interests of all parties. As Galligan J.A. stated in *Soundair*, it is well established that the primary interest is that of the creditors of the debtor but other persons' interests require consideration as well. This may include the interests of a purchaser such as Mr. Bharwalia who has negotiated an agreement with a Court appointed receiver.

27 In this case, the sales process was properly run. Redemption of its mortgage by Marlwood in these circumstances would interfere with the integrity of that process. I also find that the respondent has not established that it has come to court with clean hands entitling it to the order sought permitting it to redeem its mortgage. The respondent has not acted in good faith.

28 In the circumstances, it is appropriate that the sale to the Smardenka Group and assigned to T.P.C.@Marlwood Inc. be approved and that the motion by the respondent Marlwood to redeem the first mortgage be dismissed.

Receiver's motion granted; mortgagor's motion dismissed.

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