Dec 15/11

Mr. Benchetrit for Trustee
Mr Klotz for Ms. Sloane-Cole
Mr. Dancke for RBCDS.

The Trustee seeks a vesting order in relation to an agreement of purchase & sale regarding the bankrupt's McPherson Ave property. RBC is first mortgagee. It agreed to the Trustee conducting the sale process & supports the sale. Ms. Sloane-Cole is the bankrupt's former wife. She

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
FILED / DÉPOSÉ
DEC 1? 2011
LOCAL REGISTRAR - GREFFIER LOCAL
TORONTO

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IN THE MATTER OF THE BANKRUPTCY OF HENRY COLE, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-OR-207806T

Dec 15/11

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

Proceedings commenced at TORONTO

MOTION RECORD

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Lawyers for the RSM Richter Inc.

is the mortgagee. The proposed sale will not satisfy her the mortgage nor what she asserts as a preferred claim for spousal support.

She objects to the sale on the basis she was excluded from the process, should have been consulted, would like to conduct the sale herself, & thinks the property should have been listed higher & sold for more. To support this last position, she relies on a letter of opinion from an agent at Chestnut Park, & her own enquiries about property values.

~~[illegible]~~ Ms. Scran Cole is not an inspector of the estate & did not nominate an inspector to represent her. She had the opportunity to do so but did not. If she had she would have participated fully in the entire sales process, since the Trustee obtained inspector approval for each step it took in selling the property, namely:

(1) the inspectors asked the Trustee to sell the property. RBC, first mortgagee, agreed to this process

(2) The trustee obtained 3 listing proposals from 3 realtors. including Chestnut Park.

(3) The Trustee obtained an appraisal of the property at $1.25 million to $1.36 million.

(4) The Trustee recommended engaging Sutton to sell the property. The Inspectors instructed the Trustee to do so.

(5) When offers came in, they were presented

to the inspectors who
instructed the Trustee
what to do with them.

The property was
listed at $1.395 million
(just over the top of
the appraised range of
value); just after
Labour Day to catch the
fall market. It was
shown 54 times. In
all there were 4 offers,
some with conditions.
~~[illegible]~~ The Trustee
attempted to ~~[illegible]~~ obtain
higher sale prices than
the offers. At the end

of the day, the current offer, conditional only on a vesting order was obtained. It is for $1.38 million, well within the appraised value of the property & at the higher level.

I have no evidence putting a "for sale" sign up sooner, showing the property vacant, or listing it higher (Ms. Sloane-Cole's suggestions) would have generated a higher price. I cannot accept Ms. Sloane-Cole's argument that no vesting order should be made for these reasons.

As for "consultation" I am satisfied Ms Sloane-Rose has been generally informed of the process along the way & her questions answered. She could have been a full participant had she or a nominee, been an inspector.

Her counsel suggests this motion should be denied, & RBC should simply exercise its power of sale under the first mortgage. RBC will do so if this motion is not granted.

It will then have to embark on a new process that will satisfy its obligations under its mortgage. This will result in more delay & cost with no guarantee of a better price. More importantly, RBC has no obligation, on a power of sale, to consult with Ms. Sloane Cole at all.

Last Ms. Sloane-Cole argues her rights will be extinguished if the order is made. The draft vesting order provides for the net proceeds remaining of sale (after paying out RBC & closing costs) to ~~[illegible]~~ stand in place & stead of the Property. This protects her rights. It does not extinguish them.

In sum, although this is not a sale approval motion I am satisfied with the sales process, marketing of the property & the proposed sale.

Vesting order to go in terms of draft order I have signed.

Mesbur J.