

Dec 15/11

Court File No. 31-OR-207806T

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

Proceedings commenced at TORONTO

MOTION RECORD

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
LSUC Registration No. 34163H
Tel: (416) 218-1141
Fax: (416) 218-1841

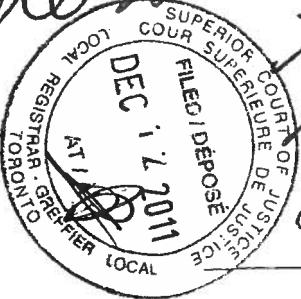
Lawyers for the RSM Richter Inc.

Doc#930924v1

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Mr. Benchetrit for Trustee
Mr. Klotz for Ms. Sloane Cole
Mr. Danke for RBCDS.

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



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

The 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 inquiries about property values.

~~The Children~~ Mrs Fran
 Rose 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:

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- (1) The inspectors asked the Trustee to sell the property. RB, 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. For all there were 4 offers, some with conditions. ~~The Trustee~~ The Trustee attempted to ~~have~~ obtain higher sale prices than the appraiser. 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 highest end.

I have no recollection putting a "for sale" sign up sooner, showing the property vacant, or listing it higher (Mrs. Swane-Cole's suggestions) would have generated a higher price. I cannot accept Mrs. Swane-Cole's argument that no vesting order should

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be made for these reasons.

As for "consultation"

I am satisfied Mr. Swane-
more 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,
RMC has no obligation,
on a par with sale, to
consult with Ms. Sloane
at all.

But Ms. Sloane - Coe
argues her rights will
be extinguished if the
order is made. The
draft vesting order provides
for the net proceeds
remain with

of sale (after paying
out RBC & closing costs)
to ~~behold~~ 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.

Besting order to
go in terms of draft
order I have signed.
Mervin