

Re Bridging Finance Inc. et al

CV-18-608978-OOCL

Justice S. F. Dunphy

13 December 2018

ENDORSEMENT RE SALE APPROVAL – FORMA-CON BUSINESS

The receiver has brought this motion seeking approval of a sale and vesting order in the context of a going-concern business. The motion has been brought on very, very short notice and involves assets being sold at the end of a limited sale process very early on in the receivership process. The receiver was appointed less than a month ago (on November 19, 2018). Obtaining court-approval for such a sale at this juncture requires exceptional circumstances. In my view, such circumstances have been demonstrated.

The assets being sold are used in the concrete forming business of the debtors. These assets are currently being used in seven projects. The debtors required significant funding in order to keep the lights on in terms of enabling the debtors to continue to carry on with the projects. That funding has included \$1 million from the purchaser and receiver's certificates with the appointing creditor to the tune of approximately \$1.1 million. The well of available credit is on the verge of running dry and the overhead in terms of payroll and other expenses required to continue to operate amounts to something in the order of \$300,000 per day.

The assets being sold consist of the scaffolding and cranes and other equipment, books and records, contracts relating to the equipment and revenue from the projects that the purchaser has been funding from the beginning of the receivership. While the receiver has asked to keep confidentiality of the purchase price, I have been advised that the purchase price is well in excess of the liquidation value of the equipment being sold.

I note parenthetically that absent the "hard assets" like equipment, the going concern value of this company is truly endangered asset. The projects on which it works typically involve a number of contractors and strict time constraints. The failure of one contractor can have knock-on impacts upon others with the result of very significant loss of value in terms of outstanding accounts receivable. The debtors have over \$21.5 million in accounts receivable, about ¼ of which will be very substantially shored up by a going concern sale.

There has been a process leading up to this sale. Although less than perfect, it is all the process that the circumstances will actually permit. The debtors were conducting a sales process prior to the receivership over a period of several months and were quite motivated in doing so. The purchaser in this case was identified during that process and the transaction proposed before me is substantially similar to what was being negotiated pre-receivership.

The bottom line is that there will not be three opportunities to salvage any part of the going-concern value of this business. If this transaction is delayed, it may fall apart. The receiver needs substantial

funding to keep the lights on and has burned through all that is on offer. There are very major successor employer issues, more than \$4 million in payments due to the unions for pension and benefit plan contributions. I am persuaded that there is a very high likelihood that this business will collapse absent the assurance of a pending sale in a matter of days or weeks at most.

The beneficiaries of a sale include:

- Employees (approximately 500) will be able to continue to work on and complete the projects and approximately \$4 million in potential priority or super-priority pension and benefit claims will be substantially resolved;
- The 7 going concern projects will not be abruptly terminated with the resulting losses to owners, bonding companies and other contractors adversely impacted;
- Aluma is satisfied that its contracts and lien claims will not be adversely impacted by the sale proposed;
- The secured creditor- owed approximately \$75 million at this point – supports the transaction.

It is too early in the process to be confident that nobody will be adversely impacted by the sale or its proposed terms and the short service of this motion does not permit me to take undue comfort from the lack of any opposition to this transaction voiced from the multiple counsel in the room. However, CRA who has several million dollars in potential priority claims is unopposed. The proceeds of sale (with the exception of a payment of one essential trade supplier that the purchaser is insisting is required to be paid) will be held by the receiver and not be distributed until further order. Such secured creditors as appear from the Receiver's searches appear to be bonding companies and not creditors with direct claims on assets being sold.

In short, time is of the essence and the order proposed preserves the most rights possible while offering the best hope of ^{avoiding a} melt-down in value. Information is never perfect but the perfect should not defeat the possible. I am approving this transaction and the very limited form of approval and vesting order proposed.

A note about confidentiality. The order proposed requests that I seal a confidential appendix to the receiver's report. This includes the unredacted purchase agreement. I am satisfied that the redactions made have been limited and reasonable. The time limits proposed re purchase price are limited as well. I am approving the appropriately restrained sealing order as requested.


S. F. Dunphy J.