



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00703958-00CL DATE: 28 November 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: **DEA CAPITAL ALTERNATIVE FUNDS SGR, S.P.A., AS
MANAGING COMPANY OF ITALIAN CLOSED-END
INVESTMENT FUND IDEA CCR (CORPORATE CREDIT
RECOVERY) I v. UTIL CANADA LIMITED et al**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Mr. Jeremy Nemers	Counsel for KSV Restructuring Inc., in its capacity as the Court appointed receiver	jnemers@airdberlis.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Mr. Eric Gionet	Counsel for Barrie Welding & Machine (1974) Limited	egionet@dllaw.ca

Mr. Mike Shakra	Counsel for Nisshinbo Automotive Manufacturing Inc.	shakram@bennettjones.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. KSV Restructuring Inc. ("KSV"), in its capacity as the Court-appointed receiver (in such capacity, the "Receiver"), without security, of all the assets, undertakings and properties (collectively, the "Property") of Util Canada Limited (the "Debtor"), seeks three orders, as follows:
 - a. approving the auction services agreement dated October 30, 2023 (the "Auction Agreement") between Perfection Global LLC (the "Auctioneer") and the Receiver regarding the auction and sale of substantially all the Property (other than the equipment and warranty rights being sold to the Barrie Purchaser, as defined below) (collectively, the "Auction") and vesting any assets purchased in the Auction (the "Purchased Assets") in the corresponding purchasers at the Auction, free and clear of encumbrances, upon delivery to them of the applicable Purchaser Bill of Sale (the "Auction AVO");
 - b. approving the agreement of purchase and sale dated October 26, 2023 (the "Sale Agreement") between the Receiver and Barrie Welding & Machine (1974) Limited (the "Barrie Purchaser") for the purchase and sale of certain equipment and warranty rights, and authorizing the Receiver to complete the transaction contemplated thereby (the "Sale") and upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Sale, vesting the Purchased Assets (as defined in the Sale Agreement) in the Barrie Purchaser (the "Barrie AVO"); and
 - c. an ancillary order (the "Ancillary Order") dealing with any residual assets, the approval of the activities and fees described in the Receiver's second report dated November 17, 2023 (the "Second Report"), and temporarily sealing certain confidential appendices to the Second Report.
2. The Auction Agreement and Sale Agreement are the product of the court approved sale process for the solicitation of potential purchasers (including strategic and financial parties, as well as liquidators), marketing and advertising of the Property undertaken pursuant to an Order issued on September 15, 2023 (the "Sale Process Order"). The Receiver is of the view that the proposed Auction and Sale represent the best offers for the subject Property applicable to each and recommends that the court approve them both. The service list was served with this motion over ten days ago and there no one appeared to oppose it nor has the Receiver been contacted by any stakeholders expressing objections or concerns.
3. The Auction Agreement and the Sale Agreement are conditional upon the Auction AVO and Barrie AVO being granted by the court by November 30, 2023.
4. The Sale Process was conducted in accordance with the Sale Process Order, as described in more detail in the Second Report. The Auction Agreement and Sale Agreement are a product of that process. The Receiver believes the Sale Process was commercially reasonable and appropriate in the circumstances and that these transactions provide for the greatest recovery available in the circumstances. The Receiver is of the view that additional time marketing the Property will not result in a superior transaction and would impair value given the occupancy costs and other expenses being incurred to store the Property. The Receiver believes that the commercial terms of the Auction Agreement and Sale Agreement are reasonable. Neither of the Debtor, nor any other stakeholder served, opposes the proposed orders.

5. The Guaranteed Amount under the Auction Agreement is the equivalent of the purchase price on a sale. The Auction AVO is consistent with the Commercial List model AVO with appropriate adjustments for the sale by auction rather than direct sale. Vesting will occur upon the delivery of a Purchaser Bill of Sale by the auctioneer as opposed to a certificate from the Receiver.
6. The Barrie AVO is in a form consistent with the Commercial List model AVO. It deals with certain machinery that was subject to registered lien claims that is being purchased by a creditor. The purchase price extinguishes the debt and includes a cash component as well. The Receiver believes that the Barrie Transaction provides for the greatest recovery available for the Barrie Equipment in the circumstances and exceeds the amount that the Auctioneer was prepared to pay for these assets. The Receiver believes that the commercial terms of the APS are reasonable.
7. I am satisfied that the sales process that was undertaken meets the requirements of the principles *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) and that the proposed Auction AVO and Barrie AVO in respect of the Property should be approved.
8. The Confidential Appendices that the Receiver seeks to seal under the Ancillary Order contain commercially-sensitive information, which, if disclosed, would likely have a detrimental impact on the monetization of the Property if the Auction does not proceed.
9. The requested partial sealing order is limited in its scope (only specifically identified Confidential Appendices and only those aspects of those appendices that contain the commercially sensitive information about pricing and value and other offers that were considered as part of the Sale Process) and in time (until the Auction is completed).
10. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the Property if the Auction does not proceed or is not completed. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
11. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with the approval and vesting orders.
12. The Receiver is directed to ensure that the sealed Confidential Appendices are provided to the court clerk at the filing office in an envelope with a copy of this endorsement and the signed order with the relevant provisions highlighted so that the Confidential Appendices can be physically sealed. The Receiver is further directed to ensure that the Confidential Appendices are "unsealed" upon the completion of the Auction, or further court order, as provided for in paragraph 4 of the Ancillary Order.
13. The Ancillary Order also authorizes the Receiver to deal with certain other moulds and tools, the ownership of which has not yet been determined (the "Residual Assets"). Once the Auction AVO and the Barrie AVO are implemented, the Receiver expects to be winding up the receivership and seeking a discharge and will not be able to continue to hold these assets and requires the ability to sell them.
14. These Residual Assets could be added to the Auction Agreement if that is determined by the Receiver to be appropriate. However if they are not, the Receiver needs to be able to deal with them. If it is not able to reach an agreement regarding the entitlement to the proceeds of realization or requires a further vesting order or other directions from the court in respect of these Residual Assets, the Receiver may then come back to court prior to or in conjunction with its discharge. The customer that is claiming to own these Residual Assets does not oppose the terms of the Ancillary Order regarding how the Receiver will deal with these assets in the interim.
15. The fees claimed for the Receiver and its counsel are supported by affidavits and accounts rendered and reflect the work that they have done since the commencement of these proceedings. The professional fees for which approval is sought are commensurate with the tasks performed and the time spent and are consistent with comparable professionals' rates. The Receiver is of the view that the hourly rates

charged by Aird & Berlis are consistent with rates charged by law firms practicing in restructuring and insolvency in the downtown Toronto market, and that the fees charged are reasonable and appropriate in the circumstances. I find the fees of the Receiver and its counsel to be fair, reasonable and justified in the circumstances.

16. The approval of the Second Report and activities described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders. It has become common practice to seek the approval of the interim fees and activities of court appointed officer, for the stability and other recognized salutary effects that the interim approval process provides. See *Target Canada Co. (Re)*, 2015 ONSC 7574, at paras. 2 and 23.
17. The Auction AVO, Barrie AVO and Ancillary Order all signed by me today may be issued and entered. They shall have immediate effect, without the necessity of issuance and entry.

A handwritten signature in dark ink, appearing to read 'Kimmel J.', with a stylized, cursive script.

KIMMEL J.