



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710267-00CL

DATE: March 8, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: MCAP FINANCIAL CORPORATION v VANDYK-BACKYARD KINGS MILL LIMITED et al.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver, KSV Restructuring Inc., brings a motion for an order approving the proposed Sales processes; and approving the Receiver’s Consolidated Report.
- [2] KSV has been appointed the Receiver of various debtors, each of which is a single purpose real estate development company that owns a specific project that it was developing on its real property. Only certain debtor properties are included in the sales process proposed today. The proposed sales process is in respect of the Property of 2402871 Ontario Inc. (“240”), Vandyk – The Ravine Limited (“Ravine”), Vandyk – Heart Lake Limited (“Heart Lake”), 2495065 Ontario Inc. (“249”), Vandyk – Backyard Kings Mill Limited (“Kings Mill”), Vandyk – The Buckingham North – Grand Central Limited and John Vandyk (“Buckingham”), Vandyk – 41 Wabash Limited (“Wabash”) and 1000318652 Ontario Inc. (“1000”) (collectively, the “Companies”).
- [3] No party opposes the relief sought by the Receiver.

[4] The Receiver, in consultation with the mortgagees, invited a number of national real estate brokerages to submit proposals to market for sale the real property owned by each of the Companies. Each of the invited brokerages submitted proposals. The Receiver selected real estate brokerages in respect of the sale of each property, as particularized at para. 4.1.5 of the Consolidated Report.

[5] As set out in the Consolidated Report each proposed sales process is intended to progress through three phases (see para. 4.2 of the Consolidated Report).

Should the Court approve the proposed Sales Processes?

[6] The well-known factors set out in *Royal Bank v. Soundair*, 1991 CanLII 2727 (ONCA) at para. 16, which apply when the Court is considering whether to approve a sale, also apply when the Court is appraising a proposed sales process: *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, at para. 6. Those factors are:

- a. The fairness, transparency and integrity of the proposed process;
- b. The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- c. Whether the sales process will optimize the changes, in the particular circumstances, of securing the best possible price for the assets up for sale.

[7] I am satisfied that the above factors are satisfied. As submitted by the Receiver:

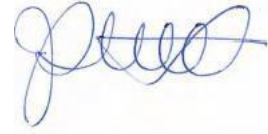
- a. The proposed sale processes satisfy the requirements of fairness, transparency and integrity. The proposed sale processes were developed with the input of the realtors that were selected. The processes are intended to broadly canvass the market efficiently to obtain the best possible prices. The properties will be broadly marketed, and any interested bidders will be permitted to bid. Accepted bids will be subject to court approval.
- b. The proposed sale processes satisfy the requirement of commercial efficacy in the circumstances. The sales processes are appropriate and commercially reasonable due to: (i) the early stage of the projects; (ii) the illiquidity of the projects; (iii) feedback from the mortgagees; and (iv) the lack of other viable options. The sales processes will be managed by the Receiver and the selected realtors.
- c. The proposed sale processes use procedures similar to those commonly used to sell real estate development projects. In addition, the processes are designed to be flexible and to provide the Receiver with the timelines and discretion needed to maximize value on the sale of the properties.

[8] The Receiver supports the proposed sale processes and is of the view that they should be started immediately. This position is also supported by the mortgagees on the properties.

[9] I am satisfied that the proposed sale processes should be approved.

[10] I am also satisfied that the Receiver's Consolidated Report should be approved.

[11] Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the upper right quadrant of the page. The signature is fluid and cursive, with a horizontal line crossing through the middle of the letters.