



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00727884-00CL

DATE: January 30, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING:

MELBOURNE DISRAELI EQUITIES (MB) INC.
V
VOKUTA, TOMISLAW ANTHONY

BEFORE: JUSTICE J DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant:

Name of Person Appearing	Name of Party	Contact Info
Tim Hogan	MSI Spergel Inc. (Receiver)	thogan@harrisonpensa.com

For Defendant, Respondent:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Oyindamola Omisore, Counsel (Observing Only)	Capital One Bank	litigation@christensenlawfirm.com

ENDORSEMENT OF JUSTICE J. DIETRICH:

[1] msi Spergel inc. as court-appointed receiver (the "Receiver"), of all of the assets, undertakings and properties of the Respondent, Tomislav Anthony Vukota (the "Debtor") seeks two orders today.

[2] First, an approval and vesting order is sought approving the sale transaction (the "Transaction") contemplated by the Assumption and Amendment of Agreement of Purchase and Sale dated December 30, 2024, as may be assigned and assumed (the "Sale Agreement") and vesting all of the right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") absolutely in and to the purchaser, Fariborz Delfani (the "Purchaser"), free and clear of and from any security, charge or other encumbrance.

[3] Second, an ancillary order is sought approving the First Report of the Receiver dated January 20, 2025 (the "First Report") and the Receiver's activities described therein, and sealing the Confidential Appendices to the First Report.

[4] No objections to any of the relief sought were raised today.

[5] Defined terms not otherwise defined herein have the meaning provided for in the Receiver's factum filed in support of this motion.

Approval and Vesting Order

[6] The Debtor owns land municipally known as St. Regis Residences, 311 Bay Street, Unit 4002, Toronto, Ontario (the "Real Property"). Following the Receiver's appointment by order dated October 21, 2024, the Receiver took possession of the Real Property, obtained an appraisal and communicated and dealt with a real estate agent Ari Zaguary (the "Real Estate Agent") of Berkshire Hathaway Homeservices Toronto Realty who had been engaged by the Debtor prior the Receiver's appointment.

[7] Based on discussions with the Real Estate Agent, the Receiver learned that the Real Property had been listed on MLS for more than six months, advertised on social media, 38 showings had taken place and four offers to purchase the Real Property had been received. The Receiver also learned that on July 29, 2024, an agreement of purchase and sale had been entered into between the Purchaser and the Debtor.

[8] The Receiver is of the view that the sale process undertaken prior to its appointment as described by the Real Estate Agent was commercially reasonable and the market was extensively canvassed. The Receiver is of the view that if it were to conduct a new sale process in relation to the Real Property, such would be very similar to the process conducted, with the Receiver incurring additional costs, with no guarantee of a higher return.

[9] Taking into account the marketing efforts undertaken prior to the appointment of the Receiver, the purchase price offered by the Purchaser and the appraised value of the Real Property, the Receiver on or about December 30, 2024, entered into the Sale Agreement with the Purchaser, subject to court approval.

[10] It is the opinion of the Receiver that the terms and conditions contained within the Sale Agreement are commercially reasonable in all respects, with a purchase price at market value and with the Transaction being the best outcome to the Debtor's estate in the circumstances.

[11] The principles to be applied when determining whether to approve a sale transaction were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* (“*Soundair*”): (a) whether the receiver has made sufficient effort to obtain the best price and has not acted improvidently; (b) the efficacy and integrity of the process by which offers have been obtained; (c) whether the interests of all parties have been considered; and (d) whether there has been unfairness in the working out of the process.

[12] I am satisfied that the *Soundair* principles have been met. The Transaction is unconditional, other than the usual closing conditions that are customary for transactions of such nature. It represents the highest purchase price out of the offers received by the Real Estate Agent for the purchase of the Real Property. The Purchaser is purchasing the Purchased Assets on an “as is, where is basis” and the Sale Agreement is subject to Court approval. Further, the Receiver is of the view that if it were to conduct a new sale process in relation to the Real Property, such would be very similar to the process already conducted, with the Receiver incurring additional costs, with no guarantee of a higher return.

[13] There is no suggestion that the Receiver acted improvidently and the Debtor’s senior secured creditor, Melbourne, supports the Transaction.


[14] The Transaction is approved. The terms of the requested approval and vesting order are based off of the Commercial List Model Order and I am satisfied they are appropriate in the circumstances.

Ancillary Order

[15] The Receiver is also seeking approval of the First Report and the activities of the Receiver set out therein. The activities of the Receiver described in its Second Report were necessary and undertaken in good faith and are approved.

[16] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Real Property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the First Report meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the receiver to file a hard copy of the confidential appendices with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.

[17] Orders to go in the forms signed by me this day.


Justice J. Dietrich