



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-22-00674717-00CL

DATE: June 26, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: LEGACY LIFESTYLES DESTIN LP et al. V. LEGACY
LIFESTYLES DESTIN PROPERTY
BEFORE JUSTICE: MADAM JUSTICE STEELE

PARTICIPANT INFORMATION

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Fred Tayar	Lawyer for Hillmount Capital Inc.	fred@fredtayar.com
Sara-Ann Wilson	Lawyers for the Receiver	Sara.wilson@dentons.com
Kenneth Kraft		kenneth.kraft@dentons.com
Jason Moore	Counsel for the Respondent Gregory Marchant, Morgan Marchant, and the MM Parties	jmoore@wagnersidlofsky.com

ENDORSEMENT OF JUSTICE STEELE:

1. Motion heard via Zoom on June 26, 2024.
2. The Receiver is seeking orders approving the sales of the Trailwinds Property and the Fort Myers Property, approving a claims procedure in respect of the Trailwinds Property, among other things.

3. No party opposes the relief sought on the motion. The DIP lender supports the relief sought.

Approval of Proposed Sale Transactions

4. As noted by the Receiver, the Court will support a receiver's decision so long as it is within the bounds of reasonableness and it proceeds fairly: *Ravelston Corp (Re)*, 2005 CanLII 63802 (ONCA), para. 40.
5. When determining whether to approve a sale transaction in a receivership the court considers the principles set out in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), para. 16:
 - a. Whether the receiver made a sufficient effort to get the best price and has not acted improvidently;
 - b. The interests of all parties;
 - c. The efficacy and integrity of the process by which the offers are obtained; and
 - d. Whether there has been unfairness in the working out of the process.
6. With regard to the Fort Myers Property and the Trailwinds Property I am satisfied that the *Soundair* factors were met (for the reasons set out in paras. 18 to 25 of the Receiver's factum re the Fort Myers Property and paras. 26 to 34 of the Receiver's factum re the Trailwinds Property).
7. The proposed Claims Procedure in respect of the Trailwinds Property is also approved. The Court was advised that because the closing date of the Fort Myers transaction is later, Court approval in respect of that claims procedure will be requested at a later date.

Approval of Proposed Sealing Order

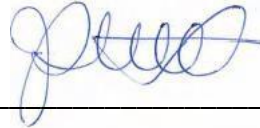
8. The Receiver seeks an order sealing the confidential appendices to the Fifth Report pending the completion of the sales. The confidential appendices contain a summary of the offers received on the Fort Myers Property, the unredacted Purchase Agreement for the Fort Myers Property, a summary of the appraised value for the Fort Myers Property and the realtor opinions of value, the CRBE appraisal in respect of the Fort Myers Property, the unredacted Purchase Agreement for the Trailwinds Property, a summary of the appraised value for the Trailwinds Property and the realtor opinions of value, and the CBRE appraisal in respect of the Trailwinds Property.

9. Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.
10. As noted by the Receiver, it is common to temporarily seal bids and other commercially sensitive material in an insolvency context when assets are to be sold under a court process.
11. The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative impact on the “open court” principle. If this information were released, it may impact the Receiver’s ability to maximize value and maintain integrity of any future marketing of the properties. No stakeholder will be materially prejudiced by the time limited sealing order, which applies to only a limited amount of information.
12. 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 41, at para. 53, requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.
13. The Receiver is directed to provide the sealed confidential appendices 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.

Approval of Activities and Fees

14. The Receiver seeks Court approval of its Fifth Report and the Supplemental Report to the Fifth Report, and the activities set out in the reports. The principles set out by the Court regarding the approval of the activities of a receiver or monitor, and their reports, are well established: *Target Canada Co. Re*, 2015 ONSC 7574 at paras. 2 and 12; *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para. 66.
15. I am satisfied that the Receiver’s activities were appropriate and consistent with the Receiver’s mandate and that the Receiver’s activities should be approved as requested.

16. I am also satisfied that the fees and disbursements of the Receiver and its counsel are fair, reasonable and justified in the circumstances. I note that fee affidavits have been filed.
17. Orders attached, which are effective immediately and without the necessity of issuing and entering.

A handwritten signature in blue ink, appearing to read 'J. Steele', is positioned above a horizontal line.

JUSTICE STEELE