



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-21-00672628-00CL DATE: June 24, 2022

NO. ON LIST: 4

TITLE OF PROCEEDING: **EMPIRICAL CAPITAL CORP V IDEAL (WC) DEVELOPMENTS**

BEFORE JUSTICE: **CONWAY**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Wendy Greenspoon-Soer	EMPIRICAL CAPITAL CORP	wgreenspoon@garfinkle.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Judy Hamilton	Ideal Developments Inc	jh@friedmans.ca

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Daniel Weisz (Receiver)	RSM Canada Limited	Daniel.weisz@rsmcanada.com
Ali Shaikh		alishaikh@slclawyer.ca
Nicholas Kluge		nicholas.kluge@gowlingwlg.com
Jeff Larry		jeff.larry@paliareroland.com

Arnie Herschorn aherschorn@mindengross.com

## ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this endorsement shall, unless otherwise defined herein, have the meanings ascribed to them in the factum of the Receiver dated June 22, 2022.

The Receiver brings this motion for an approval and vesting order (AVO) to transfer title to the Property into the name of Purchaser pursuant to the APS for the Transaction.

The Property was sold in accordance with a Marketing Process Order granted by Justice Kimmel which started on March 29, 2022 and required bids to be submitted by May 12, 2022. Dragon was the successful bidder (and assigned its rights in the Transaction to the Purchaser).

The Receiver recommends the Transaction.

I am satisfied that the *Soundair* principles have been satisfied. The Property was marketed to thousands of prospective purchasers, listed on MLS, advertised on the Avison Young website and in the Globe and Mail. The marketing process following the Marketing Process Order and last six weeks. Confidentiality agreements were signed by 28 potential purchasers. Three offers were received.

The Receiver accepted the Dragon offer. In its Second Report, it says that the APS was the most advantageous one for the creditors of the Property. In particular, the cash component of the APS exceeded that of the other two offers. Although a portion of Dragon's bid was a credit bid, the Receiver had no regard to the validity of the Dragon/American mortgages in determining whether the APS was the superior bid. Further, the cash component of the APS gave rise to a higher net realizable value than the other bids because certain costs would have had to be deducted from the cash received in those other offers.

The motion was contested.

Mr. Faruqi is one of the 15 Home Buyers that are seeking to recover their deposits paid to Ideal. They allege that the principal of Ideal (Mr. Nadarajalmgam) (the "**Ideal Principal**") defrauded them of their funds. Mr. Faruqi opposes the Transaction and said in his responding materials that he was offering to purchase the Property for \$6.81 million. The problem is that Mr. Faruqi did not engage in or comply with the court approved sales process, even though he was represented by counsel at the hearing before Justice Kimmel and was invited to submit an offer during the process. His counsel says that there was a communication breakdown between Mr. Faruqi and his former counsel – unfortunately, that does not excuse his failure to abide by the court process. In any event, the cash component of the APS exceeds Mr. Faruqi's offer.

At the hearing, Mr. Faruqi said that the sales process was not transparent because he was not told what the amount of the successful bid was. When the amount of the cash component in the APS was improperly revealed at the hearing, Mr. Faruqi then put forth another bid of over \$8 million, and asked to reopen the process.

That is simply not how the court approved process works. It is essential that the integrity of the process be maintained. All of the bids are subject to confidentiality provisions as part of that process. Mr. Faruqi was never entitled to know what they were. It is the Receiver that provides a report to the court for its consideration in determining whether to approve a transaction. This is not an issue of transparency.

Further, and as noted, Mr. Faruqi had the opportunity to participate in the process along with other bidders and did not do so.

Next, Mr. Faruqi suggest that there is a relationship between Dragon and the Ideal Principal and that they are colluding together. He attacks the validity of the Dragon/American mortgages that are the credit bid part of

the Transaction. There are several problems with these arguments. First, there is extremely thin evidence of the relationship between Dragon and the Ideal Principal. Second, the Receiver did not take into account the validity of those mortgages in determining that the Transaction was the superior one. Third, counsel for all parties acknowledged at the hearing that granting the AVO may transfer title into the name of the Purchaser and protect the proceeds for creditors of Ideal but would not preclude a tort or other claim for damages if the buyers uncover evidence of conspiracy or fraud against Dragon and/or the Ideal Principal.

Finally, Mr. Herschorn attended today for other home buyers. He opposed the motion on the basis that the purchase price is almost \$2 million lower than an appraisal for the Property conducted in 2020. That appraisal is almost two years old and is based on certain assumptions. More important, however, the appraisal ceases to have relevance once widespread marketing of the Property is done, as it was in this case: *B&M Handelman Investments Limited et al v. Mass Properties Inc.*, 2009 CanLII 41349; *Royal Bank of Canada v. Atlas Block Co. Limited*, 2014 ONSC 1531.

It is for these reasons that I am approving the Transaction and granting the AVO. The remainder of the relief set out in the Ancillary Order is satisfactory. The Ancillary Order contains a sealing order for the Confidential Appendices to the Receiver's report and should be sealed pending the closing. The sealing order meets the *Sierra Club/Sherman* test and is granted. **Counsel for the Receiver is directed to file a hard copy of the Confidential Appendices with the court in a sealed order with a copy of this endorsement and the signed orders.**

Orders to go as signed by me and attached to this endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.