

Court File Number: CV-21-00672628-00CL

Superior Court of Justice
Estates List

FILE DIRECTION/ORDER

APPLICATION UNDER s. 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985 c- B-3, as amended and S. 101 of the Courts of Justice Act, R.S.O. 1990, c.C-43, as amended

EMPIRICAL CAPITAL CORP.

Applicants

AND

IDEAL (WC) DEVELOPMENTS INC.

Respondents

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Email/Facsimile No:
See counsel slip attached		

Order Direction for Registrar (**No formal order need be taken out**)
 Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)

Adjourned to: _____

Time Table approved (as follows): _____

Hearing Date: **March 22, 2022**

ENDORSEMENT OF JUSTICE KIMMEL

[1] The applicant is the first mortgagee. RSM Canada Limited ("RSM"), in its capacity as the receiver (the "Receiver") appointed by this Court pursuant to the Order made January 11, 2022 (the "Appointment Order"), without security, of the property municipally known as 6532 & 6544 Winston Churchill Boulevard, Mississauga, Ontario (the "Property") owned by Ideal (WC) Developments Inc. (the "Debtor"), seeks an order approving the First Report of the Receiver dated March 1, 2022 (the "First Report") and the conduct and activities of the Receiver described therein, and approving the fees of the Receiver and its counsel.

[2] Specific relief is also sought regarding the retention of Avison Young Commercial Real Estate Services, LP ("Avison Young") as the listing agent for the Property and for the court's approval of a process for the listing and marketing of the Property for sale set forth in the First Report (the "Marketing Process").

[3] Some of the stakeholders are home buyers (the "Home Buyers") who entered into agreements to purchase homes to be built on the Property by the respondent debtor. There were initial concerns raised by some of the Home Buyers and/or their counsel regarding the relief sought on this motion. They wish to preserve their claims (including with respect to the return of deposits paid or purchase monies advanced) as against the respondent debtor and its principals and/or as against any sale proceeds from the sale of the Property. The Receiver has advised that the treatment of any sale proceeds will be subject to the court's future determination of priorities and the court's approval of any proposed distributions.

[4] The Receiver confirmed that it had not intended by this motion to interfere with or prejudice any claims made or to be made by the Home Buyers and has agreed to a slight modification to the proposed order (in paragraph 6) to placate these concerns, although the Receiver did not consider the originally proposed language to have prejudiced these claims. On this basis, there were no objections raised to the proposed order sought by the Receiver at the return of this motion.

[5] While recognizing that it is in the interests of all stakeholders for the Property to be marketed and sold, the Home Buyers do have concerns about future distributions and the validity and enforceability of the second and third mortgages (that the Receiver has assured them they will have the opportunity to address on a future motion) and also have concerns about the manner in which the respondent debtor has handled their deposit monies. The latter concern may be beyond the current scope of this receivership. The court has encouraged the Home Buyers and their counsel to confer amongst themselves, and with counsel for the Receiver, if they are considering options for expanding the scope of investigation into the handling of their deposits or other issues involving their dealings and transactions with the respondent debtor.

[6] The respondent debtor does not oppose the relief sought by the Receiver on this motion. The debtor maintains that it has responded to appropriate requests of the Receiver to date regarding the deposits, which response has been to confirm that none of the Home Buyer's deposits are currently held. The respondent debtor's position is that the more recent requests regarding the disposition and use of the deposits prior to the appointment of the Receiver go beyond the scope of the current Appointment Order. That too is an issue for another day.

[7] The court has received and reviewed the First Report and the affidavits confirming the fees of the Receiver and its counsel and they all appear to be appropriate and are approved.

[8] The Receiver's counsel provided the court, in accordance with the current commercial list practice direction, with four confidential appendices to the Receiver's First Report that are proposed to be sealed under a partial sealing order (the "Proposed Sealing Order"). With the exception of the first confidential Appendix (a standard form of Home Buyer's agreement of purchase and sale and attached Tarion Addendum and Schedules with the purchaser names and purchase prices redacted), the court is satisfied that the proposed sealing of the other three confidential Appendices is necessary to avoid any interference with attempts to market and sell the Property, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information while the Marketing Process is ongoing and pending the completion of any sale of the Property. These salutary effects outweigh any deleterious effects, including the possible negative effects on the right to free expression and the public interest in open and accessible court proceedings.

[9] The proposed sealing is as narrow as possible (only those confidential appendices that pose a risk are being sealed) while still achieving the legitimate requirement of protecting the Marketing Process and a potential future sales process, in the interests of all stakeholders. Accordingly, it appropriately balances the open court principle and legitimate commercial requirements for confidentiality. I am satisfied that the proposed Partial Sealing Order is appropriate under the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC requirements. The nature and scope of the Proposed Sealing Order is consistent with the court's practice of granting limited sealing orders in conjunction with the marketing and sale of properties in receivership proceedings.

[10] Order to go in the form signed by me today, with immediate effect and without the necessity of formal entry.

[11] The Receiver's counsel shall submit to the court, together with a copy of this endorsement and the signed order, a sealed envelope containing the three sealed confidential Appendices and request that the sealed envelope be filed, so as to give effect to the Partial Sealing Order contained in paragraphs 8 and 9 of this endorsement.

A handwritten signature in black ink, appearing to read "Kimmel J.", is positioned in the lower right quadrant of the page. The signature is written in a cursive, slightly slanted style.