

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE:** FIRST SOURCE FINANCIAL MANAGEMENT INC., Applicant

**AND:**

UNIONVILLE RE-DEV CORPORATION, UNIONVILLE RE-DEV PHASE 2 CORPORATION and BLACKSMITH PARTNERS INC., Respondents

Application under subsection 243(1) of the *Bankruptcy And Insolvency Act*, R.S.C. 1985, c.b-3, as amended, and section 101 of the *Courts Of Justice Act*, R.S.O. 1990, c.c.43, as amended.

**BEFORE:** S.F. Dunphy J.

**COUNSEL:** *Stewart Thom*, for the Receiver

Daniel Weisz, RSM Canada Limited, *Receiver*

*Mark Russell*, Respondent Purchaser

**HEARD at Toronto:** May 18, 2021

**ENDORSEMENT**

[1] I allowed part of this motion on May 12 and adjourned the balance of the relief sought today until today in order to allow a proper opportunity for the motion materials to be filed in a readable form for review by me. This has now been done.

[2] There were three aspects of the relief claimed that I adjourned: (i) a blanket approval of all the receiver's activities mentioned in the various Receiver's reports filed thus far; (ii) an approval of the Receiver's receipts and disbursements as well as the fees and disbursements of the Receiver and its counsel; and (iii) approval of an interim distribution of the expected sales proceeds to the plaintiff secured creditor.

[3] I have previously indicated that I do not consider (i) above to be the object of a proper motion. If there is some particular activity that needs approval, that would need to be brought to my attention. The Receiver's reports have been circulated to the service list and no issues have been raised by any stakeholder to the court at least. I did approve the sale agreement which approval necessarily entailed a review on my part of the

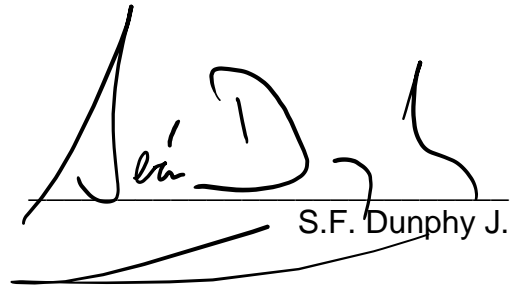
process leading to the sale, the conformity of that process with prior orders and a general consideration of the reasonableness of the steps taken to produce the agreement I approved. I do not propose to grant blanket approval of hundreds of pages of reports and appendices in the absence of an actual dispute to be resolved in respect of some aspect of them nor am I familiar with the contents of the prior Receiver's reports save and except those portions relating to the sales process that I have was required to review in order to make the orders I made last week (or am making today). This motion was my first exposure to the matter and I have no basis to comment on activities that preceded this motion that are not relevant to it.

[4] The fees and disbursements of the receiver and its counsel have been laid before me for approval. It is my task to assess whether these are fair and reasonable in the circumstances. There are two indicia of reasonableness that ought to be noted at this juncture. First, these materials have been laid before the service list and any creditor with an apparent interest as appearing from the security searches done by Receiver's counsel. None have raised an objection. Second, the plaintiff who by all accounts is in line to suffer a material shortfall in recovery on its claim, had every interest in ensuring that these claimed receipts and disbursements were fair and reasonable. As the "fulcrum creditor" this creditor has a tangible economic interest in ensuring that funds that might otherwise be available to it have been prudently spent. Once again, the lack of objection from this front provides me with comfort in the reasonableness of that which I am being asked to approve. Finally, I have read the Receiver's report and reviewed the claimed fees and disbursements in light of what experience I am able to bring to the table. The judge's task in reviewing these is not to pull out a magnifying glass and cross-examine the Receiver or its counsel about each and every phone call recorded or whether this or that step might have been done differently. Hindsight is not the test. We are expected to review them with an overall eye towards fairness and reasonableness. Having no prior exposure to this particular Receivership there is a limit to the degree of constructive scrutiny I can bring to bear. However, applying such scrutiny as I am able, I am satisfied that the receipts and disbursements and fees presented for approval, including the counsel fee, are fair and reasonable and ought to be approved. I so order.

[5] Lastly, I have been asked to approve an interim distribution to the plaintiff secured creditor. I have reviewed the security opinion filed – once again, this having been circulated to all creditors with a known interest in the assets sold from public record searches. I am satisfied that the plaintiff's security is a first-ranking security interest in the assets to be conveyed. There was one prior interest noted (to Bank of Nova Scotia) that has been confirmed as repaid.

[6] The transaction is scheduled to close on May 27, 2021. The proceeds the Receiver expects to generate from the sale are somewhat less than the approximately \$18 million the plaintiff creditor has certified to the Receiver is due in order to discharge the mortgage. I shall refrain from stating the amount of expected proceeds to avoid impairing a future sale should the current one fail to close for any reason.

[7] I am approving the interim distribution proposed being satisfied as to the amount of the debt and priority ranking of that debt. The Receiver is proposing to hold back an amount it judges sufficient to enable the orderly wind-down of the Receivership. The proposed interim distribution order will be granted.



S.F. Dunphy J.

**Date:** May 18, 2021