

Court File Number: CV-18-607303-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

ROMSPEN INVESTMENT CORPORATION

Plaintiff(s)

AND

ATLAS HEALTHCARE (RICHMOND HILL) LTD., et al.

Defendant(s)

Case Management Yes No by Judge: L.A. Pattillo J.

Counsel	Telephone No:	Email/Facsimile No:
See attached App 'A'		

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): _____

Date Heard: October 5, 2021

1. There are three matters before the court. The Receiver brings a motion for approval of its proposed distribution of the sale proceeds from the sale of the property and assets owned by Atlas Healthcare (Richmond Hill) Ltd. which closed on October 1, 2021. In addition, both Chubb Insurance Company of Canada ("Chubb") and Terra Hill Ambulatory Surgical and Medical Centre (Terra Hill) seeks costs from Mr. Grigoras in respect of his withdrawn redemption motion.

Distribution Approval

2. Based on the material filed by the Receiver in support of the motion, I am satisfied that the proposed distribution of the sale proceeds set out in the draft Distribution Order as updated by the Fourth Supplement to the Ninth Report of the Receiver should be approved.

3. Mr. Grigoras took issue with the amount of the Receiver and Meridian's professional fees. The fees of the Receiver and its counsel up to September 10 and August 31, 2021 respectively were approved by me on September 24, 2021. Mr. Grigoras did not oppose. With respect to Meridian's professional fees, that issue is a matter between Mr. Grigoras and Meridian and was not before the court. Further, it was pointed out that even if he was successful in reducing Meridian's professional fees, the beneficiary would be Chubb which is next on the priority list and, even assuming the anticipated HST rebate, Chubb would still be owed approximately \$1 million. No one else opposed the Receiver's motion.
4. Order signed by me.

Costs Motions

5. On September 14, 2021, I approved the asset purchase agreement between the Receiver and Terra Hill with respect to property owned by Atlas Healthcare (Richmond Hill) Ltd. in Richmond Hill and issued a vesting order in respect of the sale. Subsequent to the motion, the closing of the transaction was set for September 29, 2021. (See my Endorsement dated September 14, 2021)
6. At the outset of the approval motion, Mr. Grigoras sought an adjournment in order to permit him to obtain financing to redeem the mortgage and pay out the other secured creditors. I denied the adjournment, in part because Mr. Grigoras had been attempting to obtain financing to redeem since the start of the receivership and had filed no material in support of his submission that he had multiple offers of financing.
7. Subsequently, Mr. Grigoras retained counsel who appeared before me on September 24, 2021 and requested that I schedule a motion to permit Mr. Grigoras to redeem the mortgage and pay out the lien holders prior to the closing. A draft notice of motion and affidavit of Mr. Grigoras attaching a copy of a purported wire transfer for US \$65 million from Citi Bank in Germany to Atlas Healthcare's account at Scotiabank in Vaughn dated September 23, 2021. Against the objections of the Receiver, the creditors and Terra Hill, I scheduled the motion for September 28, 2021 at 4 pm and set a timetable for material and ordered that Mr. Grigoras provide both the Receiver and the court with unredacted copies of the loan agreement(s) in respect of his financing by 10 am on Monday September 27, 2021. (See my Endorsement dated September 24, 2021)
8. When Mr. Grigoras failed to provide the loan agreement(s) on the Monday as directed, the Receiver sought and obtained an urgent appearance before me at 3 pm on the Monday and requested that I vacate Mr. Grigoras' motion. Based on his counsel's submissions, I declined to vacate the motion and directed that Mr. Grigoras produce the agreement(s) by 5 pm Monday and that the parties attend before me at 9 am the next morning for a status report.
9. At the attendance at 9 am on September 28, 2021, Mr. Grigoras' counsel withdrew his motion on the basis that Mr. Grigoras had not received the redemption funds. Both Chubb and Terra Hill advised that in the circumstances, they each intended to seek costs of the abandoned motion against Mr. Grigoras personally and as a result, I set today to hear the cost submissions. (See my Endorsement dated October 1, 2021)

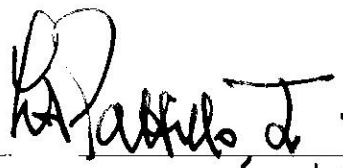
Terra Hill

10. I am satisfied, pursuant to s. 197(1) of the *Bankruptcy and Insolvency Act* and Rule 37.09(3) of the *Rules of Practice*, that I have jurisdiction to deal with the costs motions.
11. Terra Hill seeks substantial indemnity costs from Mr. Grigoras in the total amount of \$25,999.04 as set out in its Cost Outline. The costs involve the time spent by both senior and junior counsel and a student in responding to the motion including attending at the hearings, reviewing the Grigoras motion materials and preparing and finalizing Terra Hill's responding material and the cost submissions.
12. I am satisfied that an award of substantial indemnity costs against Mr. Grigoras is appropriate in the circumstances here given his conduct throughout. Mr. Grigoras was given ample opportunity to redeem the mortgage prior to the approval and vesting orders. Notwithstanding the approval and vesting order, he continued to persist. The motion was scheduled based on his affirmative statements that he was able to obtain the funding for redemption and that the US \$65 million in the wire transfer was being delivered to the Receiver's trust account. No funds were received leading to the ultimate withdrawal of the motion.
13. I am also satisfied that upon the issuance of the approval and vesting orders, Terra Hill had an interest in aggressively resisting the motion particularly given that, while the Receiver pursued confirmation of the bona fides of the financing, it had to take a wait and see position on the motion in the event Mr. Grigoras obtained funding that provided for some return for the unsecured creditors and investors.
14. In my view, given what was at stake for Terra Hill, the hours incurred and the hourly rates charged by its counsel to oppose the motion are reasonable. Nor did Mr. Grigoras raise any opposition to the amount of the fees.
15. Accordingly, Terra Hill is entitled to its costs on the motion on a substantial indemnity basis, fixed at \$25,500.00. Payable forthwith.

Chubb

16. Chubb seeks its costs of the motion not only in respect of its counsel but also the costs incurred by the Receiver and Meridian in respect of the motion which costs increase the amount each of them are entitled to from the sale proceeds which directly impacts Chubb by correspondingly reducing the amount it will receive from the sale proceeds.
17. While Chubb has filed its Cost Outline for the motion, the costs incurred by both the Receiver and Meridian are not yet available. Accordingly, Chubb's cost motion is adjourned at a date to be set when all of the cost information it seeks recovery for is available.

October 5, 2021



L.A. Pattillo J.