



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710215-00CL

DATE: April 15, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. -v- KING SQUARE LTD. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton	Receiver	Harvey@chaitons.com
Maya Poliak		maya@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jonathan Barr	Guoping Li, Interested Party	jbarr@wt.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Kerbel	Ernst & Young Inc., Receiver	jeffrey.d.kerbel@parthenon.ey.com

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] Ernst & Young Inc. ("EYI"), in its capacity as court-appointed receiver (the "Receiver"), without security, of all of the assets, undertakings and properties of the Respondents (the "Property") seeks an order, among other things:

- a. amending subsection 3(k)(i) of the Receivership Order of Justice Steele dated December 13, 2023 (the "Receivership Order") to authorize the Receiver to sell, convey, transfer, lease or assign King Square Units (as defined below) without the approval of this Court in respect of any transaction not exceeding \$1,000,000 (the "Permitted Transaction");
- b. approving a form of a Vesting Order to be used by the Receiver in connection with a Permitted Transaction and authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons LLP, counsel for the Receiver ("Chaitons") upon filing of a Receiver's certificate confirming the name of the purchaser of the King Square Unit(s) and the legal description of the purchased unit(s), which vesting order will convey the purchased unit(s) to the purchaser free and clear of any mortgages, charges, liens or other encumbrances; and
- c. sealing the Confidential Appendix to the Receiver's First Report to the Court dated April 9, 2024 (the "First Report") pending completion of the sale of all of the King Square Units, or further order of the Court.

[2] The service list was served with this motion (including all six other registered encumbrancers) and no one opposes it. For the reasons outlined in the written and oral submissions of counsel for the Receiver, I am satisfied that the requested order is just, convenient and appropriate in the circumstances.

Amendments to the Receivership Order and Approval of Future Vesting Orders

[3] Since the Receivership Order was made, the Receiver has engaged realtors to market the King Square Units for sale en bloc or by one or more units. Based on historical sales data, expressions of interest received by the Receiver to date and the advice of its real estate agents, the Receiver anticipates that it will receive numerous offers for single or multiple King Square Units.

[4] The Receiver anticipates that the sale process for the King Square Units will generate multiple transactions for one or more of the King Square Units that exceed the existing threshold limits set out in subsection 3(k)(i) of the Receivership Order. The King Square Units include 150 commercial units, 550 parking units, various storage units, kiosks and sign spaces. The Receiver reviewed both current and historical listings for the King Square Units to develop the threshold of \$1 million (increased from the previously approved level of \$100,000 at the time of the original Receivership Order).

[5] The Receiver will evaluate each offer received against the estimated market value for such retail units as described in the Confidential Appendix to the First Report (discussed below). The Receiver will not accept and proceed with any offers that are materially lower

than the market range value indicated in the Confidential Appendix. Further, the Receiver will evaluate the market response to the King Square Sale Process and provide a further update to the Court if the market suggests that the market value is materially below the Receiver's estimates and expectations.

[6] The Receiver is requesting that the Court authorize a representative of Chaitons (its counsel) to insert the name of the purchaser or the purchaser's nominee and the legal property descriptions of the King Square Unit(s) into the vesting order for each of the Permitted Transactions and authorize and direct the Registrar of the Court to sign, issue and enter each vesting order as completed by Chaitons upon filing of a Receiver's certificate with the Registrar confirming the name of the purchaser and the legal description of the property set out in each vesting order.

[7] In the Receiver's opinion it would be a waste of judicial resources and the estate's funds to require the Receiver to seek a vesting order in connection with each future sale transaction in respect of the King Square Units. There is precedent for the advance approval of transactions within a specified threshold cap and for the mechanic of the advanced approval of the form of individual vesting orders to be submitted to the registrar to sign based on a certificate from the Receiver and/or its counsel, as is proposed in this case, so that transactions can be completed within an approved sale process by a court appointed officer in the proceeding.

[8] This was done in the *Construction Lien Act* proceeding involving 144 Park Ltd. by order of Newbould J. dated June 26, 2015. This mechanic is preferred to the omnibus advance vesting which was approved by Chief Justice Morawetz in the case of *Urbancorp Toronto Management Inc. et al*, since the omnibus procedure was not ultimately accepted by the Land Registrar. The proposed mechanic in this case is intended to minimize the number of future court attendances for transactions within the recommended parameters.

[9] The Form of Vesting Order at Schedule "B" to the Order to be signed today and to be used by the Receiver in completing a Permitted Transaction is consistent with the Commercial List Model Vesting Order.

Partial Sealing Order

[10] The Receiver seeks an order sealing the Confidential Appendix to its First Report until the completion of the sale of all of the King Square Units or further order of the Court.

[11] The sealing order is limited in scope the summary of the Receiver's opinion on the market value of the King Square Units. The requested sealing order is necessary to protect commercially sensitive information that could negatively impact the open market sale process that the Receiver is engaged in.

[12] The proposed sealing order is limited to the confidential information about the ongoing sale process and time limited so as to minimally intrude upon the public interest in the openness of our courts. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality.

[13] 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 requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. This Court has applied the *Sierra* test in court-supervised sale proceedings to ensure that competitors or potential bidders do not gain an advantage if the sale transaction does not close. In *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, this Court held that the "integrity of the sales process necessitates keeping all bids confidential until a final sale of the assets has taken place."

[14] Preservation of the confidentiality of information inherent in a sale process is recognized as meeting the requirements of the test for sealing court documents in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 85 when limited to only that material that contains the confidential and sensitive information and only for as long as may be necessary, as has been proposed in this case.

[15] The Receiver is directed to ensure that the sealed Confidential Appendix to the First Report is provided 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 Appendix can be physically sealed. The Receiver is further directed to apply, at the appropriate time, for an unsealing order, if necessary.

[16] Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in dark ink.

KIMMEL J.