



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00714666-00CL

DATE: Wednesday, June 26, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. 181216 ONTARIO INC. et al

BEFORE: MR JUSTICE OSBORNE

**PARTICIPANT INFORMATION**

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## **ENDORSEMENT OF JUSTICE OSBORNE:**

- [1] The Receiver brought this motion. Initially seeking an order:
- a. declaring that the Lease in respect of the Markham Road Property between the Debtor and Mr. Cengiz Sofuoglo dated December 30, 2023 was null and void;
  - b. leave to issue a writ of possession in respect of that property;
  - c. approval of the proposed Sales Process;
  - d. approval for the Receiver to enter into the proposed Listing Agreements with Colliers;
  - e. approval of the First Report of the Receiver dated June 17, 2024, together with the activities and conduct of the Receiver described therein, and the fees and disbursements of the Receiver and its counsel described in the First Report and in the fee affidavits; and
  - f. a sealing order in respect of the Confidential Brief to the First Report, proposed to be in effect until the Sales Process is completed, or further order of the Court.
- [2] Defined terms in this Endorsement have the meaning given to them in the motion materials, including but not limited to the First Report, unless otherwise stated.
- [3] The relief sought today, amended as described below, is unopposed, and is fully supported by RBC. I note that Mr. Sofuoglo is present in court today. He also consents to the relief sought as more particularly described below.
- [4] At the outset of submissions, counsel for the Receiver, Ms. Ho, advised the Court that the relief originally sought in the Notice of Motion was being amended as a result of late-breaking developments and specifically the receipt by the Receiver of an offer to purchase the condominium unit occupied by Mr. Sofuoglo and from which he operates a commercial business as a hookah lounge.
- [5] The Receiver is reviewing that offer and will have further discussions with Mr. Sofuoglo with respect to that offer. As a result, the relief sought today has been amended to include an order that provides, among other things, that the Receiver is authorized to terminate, upon 30 days notice, all leases and agreements to lease in relation to the Markham Road Property, but no declaratory relief is being sought today terminating that lease.
- [6] In the circumstances, that amended relief makes good practical sense and I have confirmed with Mr. Sofuoglo that he understands that the relief being sought today provides that in the

event his offer is not accepted, or he and the Receiver cannot agree on amended terms, the Receiver can terminate his tenancy on 30 days notice. He understands and consents to the relief sought today.

- [7] The relief in respect of vacant possession of the Markham Road Property is appropriate, as amended by the offer just received from the tenant, as discussed above. If the offer is accepted and the property can be sold to the tenant, so much the better, and that will be the subject of a sale approval motion at a later date.
- [8] If the Receiver is of the view that that offer should not be accepted, and those parties cannot reach other terms, the Receiver should have the ability to terminate that lease and obtain a writ of possession. A vacancy of the Markham Road Property will provide a higher value in any sale, other than to the current tenant, and the current status quo may impede the ability of the Receiver to market and sell that property, given the somewhat unclear nature of the legal status of hookah lounges in Ontario and the possibility of fire hazards, all of which is explained in the motion materials.
- [9] An order for the recovery or delivery of the possession of land may be enforced by a writ of possession pursuant to Rule 60.10, and an order for possession must precede the granting of leave for a writ. Leave should be granted only where the court is satisfied that the affected party in possession has obtained sufficient notice of the proceeding in which the relief is sought. That is clear for the reasons set out above.
- [10] Beyond that, the Receiver is seeking an order approving the Listing Agreements with Colliers. The Receiver engaged two appraisers and commissioned two listing proposals both of which are summarized in the Confidential Brief. As a result of the Receiver's review of those materials, it recommends engagement of Colliers. I am satisfied that Colliers has the credentials and expertise to expose commercial properties of this nature to the marketplace and the approach is confirmed by the appraisals commissioned. That relief is approved.
- [11] The proposed Sales Process is appropriate, reasonable, and I am satisfied will adequately expose the properties to be sold to the marketplace with a view to maximizing recovery for stakeholders in a manner that is appropriate, reasonable, transparent and fair and meets the *Soundair* Principles and the factors set out in *CCM Master Qualified Fund*. Jurisdiction to approve the sales process is found in section 243(1)(c) of the *BIA*.
- [12] The activities of the Receiver as set out in the First Report are reasonable, appropriate, consistent with the mandate given to the Receiver in its original appointment order, and I am satisfied have been accretive to the maximization of value for all stakeholders. The fees of the Receiver and its counsel are appropriate, reasonable and consistent with the performance of the activities set out in the First Report. They are approved.

- [13] Finally, I am satisfied that the sealing order in respect of the Confidential Brief should be granted. It is limited, proportionate and in effect only pending the Sales Process or further order of the Court. The test as set out by the Supreme Court of Canada in *Sierra Club* as refined in *Sherman Estate* has been met.
- [14] For all of these reasons, order to go in the form signed by me today which has immediate effect without the necessity of issuing and entering.

Olson, J.