FILE NO. CI 24-01-46529

In the Matter of: The appointment of a receiver pursuant to s. 243 of the ***Bankruptcy and Insolvency Act***, R.S.C., 1985, c. B-3, as amended and s. 55 of ***The Court of King's Bench Act***, C.C.S.M. c. C280

THE KING'S BENCH
GENERAL DIVISION
WINNIPEG CENTRE

B E T W E E N:

ROYAL BANK OF CANADA,

applicant,

- and -

PADM GROUP INC., PADM MEDICAL INC., and ROSWELL DOWNHOLE TECHNOLOGIES INC.,

respondents.

SITTING DATES: **MAY 23, 2024**

JUDGE: **CHARTIER J.**

COUNSEL:
KALEV A. ANNIKO - for the applicant
(*Fillmore Riley LLP*)
G. BRUCE TAYLOR - for the respondents
MELANIE M. LABOSSIERE
(*Thompson Dorfman Sweatman)*
DAVID R.M. JACKSON - for BDO Canada Limited
CHARLES A. ROY
NICHOLAS MARK (articling student)
(*Taylor McCaffrey LLP*)
RICHARD W. SCHWARTZ - for Business Development Bank of Canada
(*Tapper Cuddy LLP*)
J.J. B. BURNELL – for 15988977 Canada Inc.
(*MLT Aikins LLP)*
KYLE FIOLKA – representative for the Fiolka Family Trust
(*Self-Represented)*

ENDORSEMENT

Re: Application to Appoint a Receiver and Motion to Approve Asset Purchase Agreement

[1] The applicant, Royal Bank of Canada ("RBC"), has brought an application to appoint BDO Canada Limited as receiver of the respondents. Concurrent with this application, the proposed receiver has brought a motion for an order approving the sale transaction as set out in the Asset Purchase Agreement dated May 23, 2024 between the receiver and 15988977 Canada Inc. At the hearing of this matter, I granted both the application and the motion and provided reasons for the application for the appointment of the receiver which I reiterate in this endorsement, and advised that I would provide reasons regarding the approval of the asset purchase agreement.

APPOINTMENT OF BDO CANADA LIMITED AS RECEIVER OF THE RESPONDENTS

[2] Upon reading the Notice of Application, the affidavit of Alex Wang, affirmed May 15, 2024, and the brief of the applicant filed in support of the application, and upon hearing submissions, no one having made submissions in opposition to the application, I am granting RBC the relief it seeks, which is the appointment of a receiver because I find that it is just and convenient to do so, based on the following evidence and circumstances:

a) the respondents, PADM Group Inc., PADM Medical Inc., and Roswell Downhole Technologies Inc., are indebted to RBC in the amount of $2,620,021.88 as of March 14, 2024;

b) the respondents are in default of their obligations to RBC under the loan agreements and guarantees;

c) the evidence supports the fact that the respondents are unable to carry on their business to meet their obligations as they become due;

d) the respondents are in default of their leases and landlords have begun taking steps to terminate or issue default notices in respect of the leased premises;

e) the respondents have executed security in favour of RBC entitling RBC to appoint a receiver upon default;

f) RBC has lost confidence in the respondents' ability to carry on its business; and

g) the appointment of a receiver and a stay of proceedings is necessary to preserve and realize on assets for the benefit of the various stakeholders.

[3] The respondents have operations in both Alberta and Manitoba. I will address the issue of the proper forum for the appointment of the receiver. Section 243(5) of the ***Bankruptcy and Insolvency Act***, R.S.C., 1985, c. B-3 (the "***Act***"), states that an application to appoint a receiver is to be filed in "…a court having jurisdiction in the judicial district of the locality of the debtor." Locality of a debtor is defined at s. 2 of the ***Act***. I am satisfied that Manitoba is the appropriate locality of the debtor as the principal debtor, PADM Group Inc., is the sole shareholder of the other respondents, is situated in Manitoba which is where the chief executive functions and management of all respondents is located, and where the directors operate.

SHOULD THE ASSET PURCHASE AGREEMENT BETWEEN THE RECEIVER AND 15988977 CANADA INC. BE APPROVED?

[4] At the hearing of this matter, there was opposition from the Fiolka Family Trust to the sale proceeding at least without further information being disclosed in relation to the assets. It was effectively seeking an adjournment of the sale of the assets pending further and better disclosure and there was also an indication that the Trust could be interested in purchasing some of the respondents' assets. Having heard the submissions on that point, I nonetheless

allowed the sale to proceed. I find that the criteria in the ***Royal Bank v. Soundair Corp.***, 1991 CarswellOnt 205, case have been met in this case and that there is no unfairness in proceeding with the sale without a postponement for further information and further notice because the opposing party is, at best, an unsecured creditor.

[5] It is true that the circumstances here are somewhat unusual as very little notice was given of the proposed sale, and there was no court approved sales process, but considering the various interests of the parties and stakeholders overall, as well as the deteriorating financial position of the respondents, I am satisfied that approving the sale is fair and just in the circumstances. I accept the submission that this is a deteriorating asset whose value lies in its worth as a business that is sold as much as possible as a going concern, which is something that is now precarious given the situation with the leases and the key employees.

[6] The consideration of whether this court should approve the proposed asset purchase agreement encompasses in this particular motion, the timing of it, given that it is brought in conjunction with the receivership application itself, and the agreement entered into mere hours earlier with notice to the various stakeholders being virtually absent. I also note that some of the materials filed with the court are, in the circumstances, also late filed. It is also submitted that part of the agreement was that the sale be approved on the return date of the motion. While the purchaser's position on timing of the closing of the transaction is something I have considered, I have given it no weight particularly as it runs counter to proper notice and court filing timelines. The purchaser is aware that there is a necessary court approval process including notice and fairness requirements. The criteria for the approval of the sale are based on principles of fairness set out in ***Soundair*** which must prevail over any party manufactured stipulations.

[7] The approach I have taken on this motion is to consider everything together including the late filing of materials, the lack of proper notice to the various stakeholders, the situation in relation to the business, the timeliness of the sale in relation to a wasting business asset, and the principles in ***Soundair***. The principles set out in ***Soundair*** apply in these circumstances and ensure that a court take overall fairness into account.

[8] Based on the filed material, including the Pre-Filing Report of the Proposed Receiver and the Confidential Pre-Filing Report of the Proposed Receiver, I am approving the proposed sale pursuant to the principles set out in the ***Soundair*** decision as I find the four criteria are met.

Whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently

[9] In this instance, a sales process was conducted prior to the receivership. That sales process can be considered by the court in assessing the first criterion under ***Soundair***. I find that this criterion has been met on the facts before me. The business of the respondents which is subject to the sale is unique in nature and difficult to value. Various parties expressed an interest, but no sale was concluded. The receiver's view of the matter is that the transaction is expected to provide greater net realization than would be expected in a bankruptcy scenario and any further sales process would be fruitless given the unique nature of the assets. It would be difficult to extract value from a third party unfamiliar with the assets and, therefore, the transaction here provides certainty despite the lack of appraisals. The purchaser is familiar with the assets and had attempted to purchase the assets, but the sale failed to close. The principles set out in ***Elleway Acquisitions Limited v. 4358376 Canada Inc.***, 2013 ONSC 7009, at paras. 33 and 34, are applicable here.

The interests of all parties

[10] In this instance, the proceeds from the sale of the purchased assets will stand in the stead of the purchased assets which will protect the various priority interests amongst the creditors. The primary secured creditors of the respondents are not opposed to the sale. It is highly unlikely that any unsecured creditors will receive a benefit from the sale of these assets. To the extent that the purchase amounts to a sale of the business as a going concern, there may continue to be employment for substantially all of the current employees of the respondents.

The efficacy and integrity of the process by which offers were obtained

[11] In all of the circumstances, and considering the precarious nature of the current business with issues arising with the landlords and employees left with much uncertainty, any further delay could result in a lower return for the assets. The proposed transaction is in the best interests of the stakeholders who have the most to gain or to lose from the transaction. I agree that there is no realistic scenario in which unsecured creditors would have any prospect of recovery. The secured creditors support the proposed transaction, and the subordinated secured creditor is not objecting. Many of the factors set out in ***OEL Projects Ltd (Re)***, 2020 ABQB 365, are applicable in the circumstances present here. In this instance, the retention of key employees is an important factor in purchasing this operation as a going concern. The circumstances here justify the sale even though it is done without a court appointed sales process and is being done quickly at the outset of the receivership (see Motion Brief of the Proposed Receiver at para. 43; see also ***Tool-Plas Systems Inc. (Re)***, 2008 CarswellOnt 6258, at paras. 10 and 17).

Whether there has been unfairness in the sales process.

[12] I find in all of the circumstances there is no unfairness in the sales process. In better circumstances there would be more exposure resulting in more opportunities for potential buyers. I agree with the receiver that more exposure is unlikely to result in a higher net realization and there is a risk of a lower realization.

SHOULD THE CONFIDENTIAL PRE-FILING REPORT OF THE PROPOSED RECEIVER BE SEALED?

[13] I am granting the sealing order with respect to the Confidential Pre-Filing Report of the Proposed Receiver on the basis of the case law and on the basis that the Confidential Pre-Filing Report of the Proposed Receiver contains sensitive financial information and that disclosure of that information to prospective purchasers would compromise any sales process should this particular sale not, for whatever reason, close.

APPROVAL OF OTHER ITEMS SOUGHT

[14] I am also granting approval of the reports filed as well as the activities of the receiver to date.

DATE June 6, 2024

G.L. Chartier

Digitally signed by G.L. Chartier
Date: 2024.06.06 11:25:04 -05'00'

J.

Copies of this Endorsement have been sent to counsel on the 6th day of June 2024.