

Janet C. Nairne

From: Koehnen, Mr. Justice Markus (SCJ)
Sent: Tuesday, October 12, 2021 1:40 PM
To: Janet C. Nairne; David P. Preger; JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: EXTERNAL: Re: C & K Mortgage Services Inc. et al v. Axess Pickering Ltd. (New)
Attachments: Axess order 20211012.pdf

Email Endorsement

Counsel

Mr. Preger and Mr. Seifer for the applicant

Mr. M. Harris for the Thrid Mortgagee

Mr. Winton for the proposed receiver

Mr. Daniel Hughes and Mr. Blair Gangon self-represented for the debtor

1. The applicants seek to appoint a receiver over the respondent. The applicants hold a first mortgage in the amount of \$8.2 million against the debtor's property . The mortgage matured on September 1, 2021 without repayment being made. The applicants made a written demand and issued a notice of intention to enforce security pursuant to section 244 of the BIA on September 3, 2021. The 10 day waiting period under the BIA has elapsed.
2. The debtor appeared today represented by two of its principals, Daniel Hughes and Blair Gagnon. They oppose the receivership on the basis of an agreement of purchase and sale that they delivered this morning. The agreement is on behalf of a limited partnership but is not signed by its general partner. Although the agreement calls for total consideration of approximately \$20million, it refers to a deposit of only \$50,000. In addition, Mr. Gagnon described a rather complex corporate structure that remains to be put together to complete the purchase which involves a number of parties related to the current development. As Mr. Gagon described it, he believed he had the ability to "put the deal together" within 45 days. The agreement remains conditional on financing and due diligence.
3. In addition, a third party has laid claim to the right to 10 condominium units in the proposed development plus 16 parking spaces and storage lockers. That would presumably complicate any proposed sale.
4. In my view, this is a situation that calls out for a receiver. The debtor does not resist the receivership on the basis of any issue concerning the fact that the debt owed is due. The debtor would simply like to pursue its favoured transaction rather than a receivership. That is not sufficient to win the

day. The debtor knew the debt was due on September 1, 2021, and could have made arrangements to pay it out. It did not do so. The mortgage agreement gives the mortgagee the right to appoint a receiver on default. It strikes me that the agreement of purchase and sale delivered today is more aspirational than actual. A receivership does not of course preclude the debtor from pursuing the proposed transaction with the help of the receiver if the receiver is of the view that it makes sense to do so.

5. I have signed and attached a receivership order in the form of the Commercial List model order.

Justice Markus Koehnen

Ontario Superior Court of Justice

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Toronto, Ont.

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