CITATION: Vector Financial Services v. 33 Hawarden Crescent, 2024 ONSC 1635
COURT FILE NO.: CV-23-704623-00CL
DATE: 20240319

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RE: Vector Financial Services Limited, Applicant

AND:

33 Hawarden Crescent Inc. and 35 Hawarden Crescent Inc., Respondents

BEFORE: W.D. Black J.

COUNSEL: *Clifton Prophet*, for Vector Financial Services Ltd.;
Steven Graff, Adrienne Ho and Obaidul Hoque, for 33 Hawarden Crescent Inc.;
Timothy R. Dunn and Alexandra Teodorescu, for Court Appointed Receiver, Pollard & Associates Inc.;
Sarit Kind, for Westdale Properties;
Christina Bowman and Harry Brar, for Rupinder Bamra;
Angela Pollard, Receiver – Pollard & Associates Inc.

HEARD: March 15, 2024

ENDORSEMENT

Overview

[1] This motion pits a debtor's right of redemption against a receiver's ability to close a concluded deal for the sale of property, and requires evaluation of the competing considerations in that setting.

[2] The receiver Pollard & Associates Inc. (the "Receiver") seeks an approval and vesting order (the "AVO") relative to an agreement of purchase and sale ("APS") for the properties at 33 and 35 Hawarden Crescent in the Forest Hill neighborhood of Toronto (the "Properties"). The Receiver's motion also seeks a sealing order for certain materials, and other related relief.

[3] The Receiver relies on the (uncontested) fact that it conducted a thoroughgoing marketing and sales process for the Properties, and that it negotiated a price for the Properties that is not only appropriate but in fact compares favourably to a recent appraisal.

[4] It points out that the debtors here (the "Debtors" or the "Companies"), while notionally having a right of redemption, have been unsuccessful in amassing sufficient funds to redeem despite having had many months to do so. Even now, the Receiver observes, the Debtors' request

is to delay the closing of the pending sale of the Properties to give the Debtors additional time to put together funding. The Debtors acknowledge that they do not yet have in place sufficient funds to redeem.

[5] The Debtors maintain that their right to redeem is an important one, all but sacrosanct, and that through their ongoing determined efforts they are very close to having sufficient funds available to redeem their interest in the properties.

[6] They also complain that, notwithstanding the Receiver's knowledge of the Debtors' continuing wish to redeem, the Receiver has failed to advise the Debtors of significant milestones and deadlines in the sales process, thereby precluding the Debtors from potentially expediting their assembly of a financial package sufficient to redeem in advance of the execution and closing of the APS.

Denial of Debtors' Request for an Adjournment

[7] I should note that at the outset of the hearing today, the Debtors sought an adjournment of the proceedings.

[8] In an email from Debtors' counsel forwarded to me to alert me that there would be a request for an adjournment, counsel advised that the Debtors were seeking an adjournment of the Receiver's motion and their own cross-motion until April 12, 2024, to allow the debtors to "take steps to redeem the mortgage."

[9] I denied the adjournment request. As I observed to Debtors' counsel, it struck me that pitching the adjournment as necessary to allow the Debtors to redeem was essentially pre-supposing the outcome of the main motion. That is, the Debtors' cross-motion essentially seeks the same relief – time to redeem - as an adjournment would yield.

[10] As I noted in the oral reasons I gave for denying the adjournment, I felt that the more specific reasons posited by the Debtors as reasons to adjourn were for the most part, to varying degrees, duplicative of the Debtors' arguments in support of their cross-motion.

[11] The return date of April 12, 2024 proposed by the Debtors in their request for an adjournment is also well after the closing date in place for the sale of the Properties, and counsel who attended on behalf of the purchaser advised that the purchaser would not be prepared to close the transaction if it is (further) delayed – the closing was already moved from early March to March 26 to accommodate this motion. While that position is not in evidence in the record before me, it was asserted by counsel, and was a risk which, combined with other considerations, militated against an adjournment.

[12] Accordingly, I heard the motion and cross-motion today.

Conclusions

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[13] For the reasons set out below, I am granting the Receiver's motion for an AVO relative to the APS so that it can close as scheduled on March 26, 2024. I am dismissing the Debtors' cross-motion seeking a further delay of that closing to give them more time to attempt to redeem.

[14] In my view, applying the relevant competing caselaw to the facts at hand, and performing the balancing of various factors that the authorities require, the Debtors fall short of the kind of compelling evidence of an imminent ability to redeem that would be required even to consider interfering with a concluded agreement by the Receiver to sell the Properties.

[15] This is particularly so when the Receiver has undertaken an extensive process, involving appropriate consultation, to develop and execute a successful sales and marketing plan for the Properties, and has obtained a price well within the range of apparent market value.

[16] The Receiver's communication with the Debtors about significant deadlines in the sales process was wanting in some respects, but the evidence does not show, on balance, that the Debtors were thwarted, in the result, in their ability to assemble sufficient funds to redeem their debt (which related and continues to relate to other factors). It also does not demonstrate that the Debtors were generally unaware of the ongoing sale process, nor unaware of the need for the Debtors to act expeditiously in order to have any prospect of redemption.

[17] The Debtors' position in effect sought to compel the Receiver (and the Lender under whose security the Receiver was appointed), to risk losing the APS, and to allow interest and other charges to continue to accrue on the basis of the uncertain possibility that the Debtors would yet succeed in attracting sufficient new funding to allow them to redeem.

[18] I find that the Debtors were the proverbial day late and dollar short, notwithstanding that they have had months to redeem. To allow the Debtors to sideswipe the pending closing of the APS would significantly undermine the role of the Receiver in this case, and create uncertainty in future receiverships.

The Debtors' Acquisitions and Financing of the Properties

[19] The Properties are the principal asset of the Debtors. The Debtors acquired the Properties with the intention of development and funded the acquisition by way of a loan from Vector Financial Services Limited ("Vector" or the "Lender") in the principal amount of $8,000,000.00. The Debtors granted to the Lender a first-ranking mortgage on title to the Properties in that amount, registered on August 26, 2022.

[20] A second mortgage in favour of Rupinder Bamra, counsel for whom was before me at the hearing of this matter, in the amount of $1,020,000.00 was registered on February 23, 2023.

Initial Appointment of Receiver Delayed to Allow for Redemption

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[21] Vector brought its application to appoint the Receiver on October 10, 2023. It is noteworthy that Cavanagh J. deferred the appointment of the Receiver to allow the Debtors an opportunity to redeem the Vector mortgage.

[22] Specifically, His Honour provided that the order (the "Appointment Order") would not come into effect until October 25, 2023, giving the Debtors just over two weeks to redeem, on the condition that the Debtors make an interim payment of $174,103.75 by 5 p.m. on October 13, 2023.

[23] The Debtors did not make the required interim payment, and so the Appointment Order took effect, appointing the Receiver, without security, over all of the Debtors' assets, undertakings and properties, including the Properties.

Pre-Existing Application for Severance of the Properties

[24] Prior to the Appointment Order, the Debtors' planning consultant, Dales Consulting ("Dales") had filed with the Committee of Adjustment two applications for a severance of the land encompassed by the Properties.

[25] It seems to be a matter of consensus among the parties that a severance, if granted, would unlock considerable value. The recent appraisal of the Properties undertaken for the Receiver, and the marketing materials prepared for the Receiver's effort to sell the Properties, both contemplate the potential to sever the lands, and the appraisal values the Properties both "as is" and "as if" (i.e., "as if" a severance would be granted).

[26] In connection with its appointment, the Receiver learned that a public hearing was scheduled before the Committee of Adjustment on November 29, 2023, to consider the Debtors' severance applications. The Receiver in fact engaged Dales to continue the severance applications, to prepare a report in that regard for the Committee of Adjustment, to attend at the hearing, and to continue to advise the Receiver of the status and progress of the applications.

Objections to Severance and Adjournment of Hearing Before Committee of Adjustment

[27] Prior to the hearing date for the severance applications, the Receiver was advised that residents of the neighborhood had filed nine letters of objection to the proposed severance. It also learned that the City Councillor for the ward in which the Properties were situate had filed correspondence with the Committee of Adjustment admonishing the Debtors to collaborate with the neighbors on the proposed severance.

[28] Then, on November 27, 2023, the City's manager of Development Engineering advised the Committee of Adjustment that there was an existing storm sewer that traverses the rear of the Properties, and that the severance applications did not identify or address how the proposed construction (if a severance were permitted) would impact the existing storm sewer. The manager of Development Engineering recommended that the Committee of Adjustment defer the severance application to an unspecified future date in order for that issue to be addressed.

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[29] As a result of these various concerns having been raised, the Receiver determined, in consultation with Dales, to defer the Committee of Adjustment hearing in order to allow for consultation with the Development Engineering department regarding the sewer easement, and to meet with the neighbors who had expressed concerns about the severance proposal. The Committee of Adjustment granted the Receiver's request for an adjournment.

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Pre-Existing Agreement to Sell 35 Hawarden Crescent and Termination of Deal

[30] Also prior to the Appointment Order, one of the Debtors, 35 Hawarden Inc., had entered into an agreement of purchase and sale dated September 13, 2023, to sell 35 Hawarden Crescent to Samantha Litchen, conditional upon severance of the property, for $3,200,000.00 (the "Litchen APS").

[31] The Receiver reviewed the Litchen APS with counsel, and concluded that the Litchen APS was not in the best interests of creditors inasmuch as it was conditional on severance approval, both the prospects and timing of which were unknown, and because Vector did not support the release of its security to allow the Litchen APS to be completed. Accordingly, on November 16, 2023, the Receiver terminated the Litchen APS.

Steps Taken to Market and Sell the Property

[32] The Appointment Order authorized the Receiver to market and sell the Properties, including the authority to engage consultants, appraisers, agents and others to assist with the sale process.

[33] In order to obtain an appraisal of the Properties, the Receiver engaged Bona Fide Appraisal Inc. ("Bona Fide") to appraise the Properties "as is" and "as if" (in the "as if" scenario, it was assumed that the severance applications, if approved, would allow for two detached dwellings and five townhouses).

[34] Bona Fide provided appraisals for both scenarios.

[35] Given the uncertainty about the timing and outcome of the severance applications, the Receiver determined that it was in the best interest of creditors to commence a sales process without awaiting the completion of the severance applications.

[36] The uncontroverted evidence shows that the Receiver, in addition to consulting with Dales, had discussions with both Vector and the second mortgagee Bamra concerning the Receiver's proposed approach to marketing the Properties, and its decision to list the Properties on the Multiple Listing Service" ("MLS").

[37] The Receiver requested proposals for listing the property for sale from four agents who had knowledge of the local market and contacts with various developers. Three of those agents submitted proposals, and the Receiver chose two agents from Home Life/Bayview Realty Inc. (the "Agents") to assist with the sale.

[38] The Receiver entered into a listing agreement with the Agents on December 6, 2023, and the Agents prepared a brochure about the Properties and the potential for development. The Agents also placed "For Sale" signs on the Properties and listed the Properties on MLS on December 8, 2023. The listing included the brochure with details about the Properties, details about the proposed severance applications, and a draft purchase and sale agreement.

[39] The Agents also contacted over 200 residential developers of land in the GTA.

[40] As a result, 128 interested parties contacted the Agents requesting additional details about the Properties and the severance application, and the Receiver and the Agents corresponded with a number of prospective purchasers.

[41] By January of 2024, the Receiver had received seven offers for the Properties. The Receiver reviewed each of these offers with its counsel, and prepared a summary of offers (the "Offer Summary").

[42] The Receiver provided general information to Vector about the offers and advised that it intended to request improved offers from each of the potential purchasers (both as to the amounts of their offers and as to the timing for closing). The Receiver and the Agents continued their discussions with the prospective purchasers, and set a deadline for the delivery of improved offers of February 5, 2024. The Receiver also discussed with the Agents, and received confirmation from the Agents, of a reduction in the commission that the Agents would charge.

[43] As of February 5, 2024, the Receiver had received three offers.

Selection of Purchaser and Deposits Received

[44] After careful review of the offers, the Receiver determined that the offer presented by the purchaser under the APS (the "Purchaser") was the most favourable one overall, and entered into the APS. In connection with the execution of the APS the Purchaser paid a first deposit to the Receiver in the amount of $500,000.00. The Purchaser has since provided the Receiver, in accordance with the terms of the APS, a second deposit, also in the amount of $500,000.00 (such that the overall deposit paid by the Purchaser to the Receiver totals $1,000,000.00).

[45] In order to accommodate the Receiver's motion (the motion before me) for the AVO, the Receiver and the Purchaser have agreed to extend the original closing date under the APS of March 5, 2024, to March 26, 2024.

Debtors' Concern re Sales Process

[46] The Debtors raise concerns in their materials for this hearing that the Purchaser is somehow affiliated with Vector and/or was given confidential information and preferential treatment not provided to other would-be purchasers. However, there is no direct or persuasive evidence to substantiate those allegations, and the Purchaser's principal has provided an affidavit deposing that the allegations are not true.

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[47] Moreover, in my view the marketing and sales approach described above seems unassailable, a fact that counsel for the Debtors candidly and appropriately acknowledged before me.

Status and Certain Details of Debtors' Evidence to Raise Funds

[48] In response to the Debtors' request to further delay the closing so as to give the Debtors more time to redeem, the Receiver notes that the Debtors have been attempting to obtain financing to repay the indebtedness due to Vector since June of 2023.

[49] The Receiver also notes that the Debtors' cross-motion contains the first evidence of the Debtors' efforts to source financing to redeem the Vector mortgage and the costs associated with the receivership.

[50] However, the Receiver observes, fairly in my view, that the proposed first mortgage financing on which the Debtors purport to rely is highly conditional, and based on one or more conditions that may prove unachievable.

[51] That is, the first mortgage commitment included in the Debtors' materials is conditional, among other items, on the receipt of a final appraisal confirming an "as is" current value of the Properties of not less than $11,725,000.00, satisfactory to the proposed lender.

[52] This condition, and perhaps others, appears all but unattainable. While the Bona Fide appraisal is sought to be subject to a sealing Order, such that I should accordingly be circumspect in referring to it, I can say that, as the only evidence before me of the "as is" value of the Properties, the Bona Fide appraisal suggests that it is unlikely that the Debtors' condition requiring an "as is" appraisal of almost $12 million will be met.

[53] Moreover, the first mortgage commitment to the Debtors was stated to be open for acceptance until February 28, 2024, and there is no evidence that it has been extended. Even assuming that it has been extended, it nonetheless seems a "bridge too far" for the Debtors.

[54] The proposed second mortgage financing referenced by the Debtors also seems uncertain. That financing was said to be open until March 1, 2024, and again there is no specific evidence that the deadline has been extended. Even if it has, the second mortgage financing is subject to a number of conditions, and there is again no evidence that those conditions have been met.

[55] As noted above, while the Debtors assert that the financing for their proposed redemption is "close" to being finalized, even they acknowledge that it is not yet available (and hence their request for more time to redeem).

[56] The Receiver also points out that, even if the Debtors' first and second mortgage financing comes through, the stated amounts of those loans would still leave a shortfall relative to the existing debt, including taxes and fees, of an amount approaching $900,000.00. In addition, these

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amounts do not encompass Vector's legal fees, the brokerage fee owing to the Agents, and HST on the Receiver's fees.

[57] The Debtors propose to address the shortfall and additional expenses anticipated in the near term by way of a combination of a new investor, identified on the eve of the hearing, and an injection of $1 million by the Debtors' directors. In neither case, however, have the Debtors provided evidence concerning the solvency of the new investor or the directors, nor identified specific money available to fund these further cash requirements.

[58] In the circumstances, without doubting the Debtors' abiding earnest intention and desire to redeem, I believe it is fair to characterize the current status of their efforts to refinance as being somewhat uncertain.

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Review and Discussion of Relevant Caselaw

A. Soundair

[59] As is typical, the starting point for the analysis of whether or not to approve a transaction proposed by a Receiver is the decision of the Court of Appeal for Ontario in *Royal Bank v. Soundair,* 1991 CanLII 2727.

[60] By way of high-level summary, Soundair requires the court to canvass the following touchstones:

a. Whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently;

b. The interests of all parties;

c. The efficacy and integrity of the process by which offers are obtained; and

d. Whether there has been unfairness in the working out of the process.

[61] I find that the Receiver here, with the assistance of the Agents, ran a robust marketing and sale process that was designed to, and did in fact, obtain the best price for the Properties based on current market conditions.

[62] The Receiver consulted with relevant stakeholders concerning its proposed approach, and the Agents exploited the market extensively by reaching out to over 200 residential developers, resulting in contact and requests for information from 128 interested parties.

[63] This in turn led to the Receiver receiving seven offers for the Properties.

[64] The Receiver negotiated with these prospective purchasers (and negotiated with the Agents to reduce their commission fees) with a view to maximizing the value for the creditors.

[65] Ultimately the Receiver received three improved offers for the Properties, allowing it to conclude that the price obtained and incorporated into the APS was the highest and best offer for the Properties by reference to various parameters, including price, agent commissions, closing date, and absence of conditions (other than court approval).

[66] I find that the Receiver's approach appropriately considered the interests of all impacted parties. In addition to meeting the Receiver's primary objective of maximizing the realization for the benefit of all creditors, the APS also minimizes closing risk and delay, and stops the ongoing accrual of interest and fees on the secured debt (which, the evidence shows, is accruing per diem interest of $3,142.19 plus default fees of $31,300 per month, meaning that the debt owing to Vector is growing by more than $125,000.00 per month exclusive of ongoing legal fees.

[67] As confirmed in *Soundair*, there are important policy considerations weighing in favour of generally according a Receiver's recommendation deference and respect as a matter of business judgment based on the information available to the Receiver at the time and in the circumstances. As the Court of Appeal for Ontario put it in *Soundair*:

> "If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in perception of receivers and in the perception of any others who might have occasion to deal with them…That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers."

[68] The upshot of the Debtors' argument against the weight of this policy guidance in *Soundair* is, in effect, to say that, given the hallowed ground on which the court has placed redemption(s), the fact that the Debtors seek to redeem fits this circumstance into the category of "…the most exceptional circumstances" earmarked within *Soundair* for special treatment.

B. Cases Emphasizing Importance of Right to Redeem

[69] To that end, the Debtors rely on a line of authorities emanating from the decision of the Supreme Court of Canada in *Petranik v Dale*, 1976 CanLII 34 (SCC) in which Chief Justice Laskin said that "the equitable right to redeem is more than a mere equity but is, indeed, an interest in the mortgaged land which is not lightly to be put aside."

[70] The Debtors argue that the pre-eminent stature of a right to redeem is such that it may prevail even in circumstances in which, as here, there is a motion to approve a sale to a third-party purchaser. They cite the decision of the Supreme Court of British Columbia in *Bank of Montreal v. Hester Creek Estate Winery et al.*, 2004 BCSC 724, in which the court said:

> "The integrity of the court process is not compromised by allowing a debtor or its trustee in bankruptcy to redeem the mortgaged property on the eve of an application to approve a sale of the property. Whenever there is a court-ordered-sale process, it is always implicit that the conduct of sale is subject to the debtor being able to pay

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> off the secured creditor before a sale is approved by the court. I am aware of no authority to the effect that the granting of conduct of sale precludes the debtor from redeeming the property. Allowing a redemption of the mortgaged property in these circumstances does not blemish the integrity of the court process but, rather, it represents the court process at work."

[71] The Court in *Hester Creek* went on to say:

> "In my opinion, it will require truly extraordinary circumstances, which do not exist here, for the court to hold that a debtor or its trustee in bankruptcy should be prevented from redeeming mortgaged property upon payment in full of the amount owed to the secured creditor prior to the pronouncement of an order absolute or an order approving a sale."

[72] This notion in *Hester Creek* of the paramountcy of a right to redeem was adopted and echoed in *Kruger v. Wild Goose Vinters Inc.*, a 2021 decision of the Supreme Court of British Columbia, 2021 BCSC 1406, in which the court confirmed that "deference is still afforded to a debtor who wishes to redeem."

C. Argument re Importance of Court-Ordered (or at Least Transparent) Sales Schedule

[73] In asserting their right to redeem, the Debtors also emphasize that, generally speaking, the cases in which courts have rejected a right to redeem have featured either a court-ordered schedule and deadline for offers, or equally transparent processes in which a debtor, notwithstanding their right to redeem, has failed to comply with clear and known timelines.

[74] For example, the Debtors rely on the recent decision of Kimmel J. in *Rose-Isli Corp. v. Smith*, 2023 ONSC 832, in which Her Honour found that, in the face of a court-approved process in respect of which the secured creditor at issue was consulted, and which it did not oppose, and where the secured creditor only sought to override this sale process by right of redemption when it became apparent that it was unable to forward a competitive bid, the right to redeem should not prevail.

[75] The Debtors argue that *Rose-Isli* and other cases on which the Receiver relies are distinguishable from this case in that in those cases, unlike the case at hand, there was a clear, court-approved process and all stakeholders including the party seeking to redeem were given notice of a bid deadline.

[76] The Debtors point out that the Receiver did not seek a court-approved sales process here, nor transparently establish a clear bid deadline. Moreover and more particularly, the Debtors allege that they were not made aware of the timelines and deadlines that the Receiver established for the potential purchasers identified and narrowed down in the sale process here, were not consulted on those matters, and were thereby unfairly excluded from meaningful participation in the process.

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The Debtors say that this was despite them asking the Receiver at regular intervals for updates on the status of the ongoing efforts to market and sell the Properties.

[77] As noted above, the Receiver's communication to the Debtors about the relevant timelines was not optimal. It is the case that the Debtors asked from time to time about the timelines in the ongoing sale process, and that the Receiver's answers were not directly responsive.

[78] On the other hand, it seems apparent that the Debtors were generally aware of the ongoing sale process, and for the need to assemble their financing package expeditiously to have any chance of redeeming.

[79] It is also the case, while only a minor factor at most, that the Debtors had been given a chance to redeem during the period at the outset of the receivership when the Appointment Order was held for a few days before taking effect for the express purpose of accommodating the Debtors' stated wish to redeem. The Debtors failed to take advantage of that opportunity such that, the Receiver argues, they had effectively lost their entitlement to special accommodation.

[80] As I say, while these events are inarguable, I still find that the Receiver ought to have been more explicit and forthcoming in the information provided in response to the Debtors' inquiries.

[81] However, I also find that the Debtors were generally aware of the ongoing process, and that the "clock was ticking" relative to any potential redemption.

[82] In addition, and critically, it is not the case that the Debtors attended before me with a comprehensive and complete financing package to allow them to redeem.

D. Importance of Debtors Being Ready and Able to Redeem

[83] It is noteworthy, and an important distinguishing factor in my view, that in the cases on which the Debtors rely in support of the ongoing ability to redeem, even in the face of a pending motion to approve a sale, the redeeming party in each case showed up at the critical juncture ready and able to pay the relevant debt.

[84] For example, in *Hester Creek*, the court notes that, at the underlying application the party seeking to redeem "presented a cheque…payable to the Minister of Finance in a sum sufficient to pay the amounts claimed by [the creditors]." Then, on the appeal which is the subject of the decision on which the Debtors rely, the court confirmed that " on this appeal, counsel for the Trustee in Bankruptcy presented a cheque payable to the Minister of Finance in the amount of $4,381,082.45, which was the sum required to pay out the indebtedness and costs claimed by [the secured creditors] as of April 22nd, and advised the court that the Trustee has a total of $5,250,000.00 in its trust account."

[85] In *Wild Goose*, while confirming the importance of a right to redeem, the Court found that the debtor in that case was only in a position to redeem some but not all of the relevant security, and that this "distinguishes this case from *Hester Creek*. In *Hester Creek*, all the secured creditors

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were protected by the redemption. Here they are not." In those circumstances, the court approved the sale proposed by the Receiver, and denied the debtor's attempt to redeem.

E. The Handelman Case

[86] Another important example of the court denying an absolute right to redeem in the face of a Receiver's motion seeking approval of a concluded agreement to sell a property is found in this court's decision in *B&M Handelman Investments Limited et al v. Mass Properties Inc.* and *Mass Banquet Halls Inc.*, 2009 CanLII 37930.

[87] In that case, Pepall J. (as she then was) dealt with similar circumstances to those in the case before me.

[88] The receiver in *Handelman* was seeking the court's approval of a sale transaction contemplated by an agreement of purchase and sale.

[89] The appointment of the receiver in that case was delayed at the outset because four adjournments of the application to appoint the receiver were granted by Hoy J. "at the request of the debtor Respondent companies" on the premise of "imminent refinancing that did not materialize."

[90] As in the case before me, the receiver, together with an agent it appointed, listed the property on MLS. The agent advertised the property widely, sent 49 detailed information packages to prospective purchasers, and ultimately received nine offers to purchase.

[91] The unconditional offer accepted by the Receiver included a deposit of $500,000.00 and the agreement required court approval and a vesting order.

[92] Among those opposing the Receiver's sale of the property at the hearing before Pepall J. was a 50% owner of the property asserting her right to redeem. That party argued that since the agreement of purchase and sale for the transaction for which the receiver sought approval stated that there is no agreement of purchase of sale until the offer...has been approved by the court" she was "still entitled to redeem."

[93] The receiver noted that it had undertaken discussions with the party in question at points in the months preceding the motion, but that the party had not pursued available options to take ownership of the property. The receiver argued that the sale process would be "undermined if stakeholders were permitted to wait by the sidelines until an offer is accepted before acting to protect their equity."

[94] In denying the 50% owner's purported exercise of her right to redeem, Her Honour noted the receiver's powers to market the property under the order appointing the receiver without interference, and referenced also the stay provisions thereunder. Justice Pepall concluded:

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> "In the face of these provisions, Ms. Singh does not have an automatic right to redeem. A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders."

[95] While here it is the Debtors as opposed to a mortgagee asserting a right to redeem, the observations by Pepall J. are nonetheless apposite in the circumstance before me.

[96] I accept that, in general, a mortgage debtor possesses an important right to redeem, and that right should not be set aside lightly.

[97] I also note, however, that in every case to which the Debtors have pointed here, the question of the wherewithal of the debtor to cover all outstanding obligations by the time of the motion to approve a sale of the property has been a critical consideration.

[98] I find that the acknowledged inability of the Debtors to redeem the Properties, up to and beyond the time of the Receiver's motion for the AVO, is fatal to the Debtors' request.

[99] Despite the imperfections of the Receiver's notification to the Debtors of the precise deadlines within the sale process, the Debtors have known for months of the Receiver's intention to sell the Properties, were aware of the ongoing sale process, had notice of the Receiver's motion for the AVO, and still have been unable to come to court with evidence of anything but highly conditional and uncertain financing prospects, let alone with a final and all-encompassing financial package.

Potential for Closer Call, But Not Here

[100] In my view there could still be an interesting choice in circumstances in which the contest is between a Debtor who attends at a Receiver's motion for approval of a sale with "a cheque" as in the *Hester Creek* case (i.e. with sufficient funds to pay out all relevant creditors) versus a Receiver who, as here, has run a lengthy and comprehensive sale process, involving considerable time and expense, to identify a purchaser who is before the court, has paid a substantial deposit, and clearly has the ability to complete the transaction at issue.

[101] In that circumstance there would in my view be an interesting dilemma between the important equitable right to redeem and the policy considerations about protecting the integrity and predictability of the receivership sale process.

[102] However, that is not the situation before me. The Debtors are simply not in a position, at the time of the Receiver's motion for the AVO, to redeem.

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Summary of Conclusions

[103] I find that the Receiver has met the requisite elements of the *Soundair* test.

[104] The marketing and sale process was thoroughgoing and robust, and appears to have resulted in a favourable price.

[105] As discussed, I see no basis on which to conclude that the integrity of the process was in any way compromised.

[106] There is no evidence of any unfairness, and the process and the price obtained serve, in my view, the interests of all parties.

[107] For all of these reasons, I grant the AVO sought by the receiver, and dismiss the Debtors' cross-motion.

Sealing Order Granted

[108] The Receiver also seeks a sealing order relative to the Bona Fide appraisal, the summary of offers it received, and the unredacted APS.

[109] I note that the Debtors do not oppose that relief, and I am persuaded that, on the off-chance that the APS does not close as scheduled on March 26, 2024, disclosure of these details could negatively impact any future realizations.

[110] Accordingly, I am prepared to grant the sealing Order sought, pending the closing of the APS or further order of the court.

W.D. Black J.

Date: March 19, 2024

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