

Court of King's Bench of Alberta

Citation: 2531005 Alberta Ltd. v Katharine Enterprises Ltd., 2023 ABKB 718

Date: 20231214
Docket: 2301 15049
Registry: Calgary

Between:

2531005 Alberta Ltd.

Applicant

- and -

Katharine Enterprises Ltd.

Respondent

**Endorsement of an Oral Decision
of the
Honourable Justice J.S. Little**

I. Introduction

[1] 2531005 Alberta Ltd. (253) seeks an Order appointing KSV Restructuring Inc. (KSV) as a receiver of the assets of Katharine Enterprises Ltd. (KEL) together with an Order approving the sale of KEL's real estate to 253.

[2] Dealing first with a preliminary matter, I received on December 12, 2023 an Affidavit from a Ms. Mills, who is a shareholder of a shareholder of KEL. She complains of lack of notice of this application and alludes to mischief resulting from relationships within the corporate parties. The common shareholdings and directors of certain of the parties involved in this application may be of some relevance, but Ms. Mills as a shareholder of a shareholder does not have status to be heard.

II. Loan and Security

- [3] There are some wrinkles in the history of how 253 became a secured creditor of KEL. Based largely on the Affidavit of Mr. Mele, a director of 253, they boil down to this:
- [4] ATB took blanket security from KEL in 2011 for a loan of up to \$1,405,000. The security included a collateral mortgage against two commercial condominium units in Edinburgh Place, Calgary.
- [5] KEL defaulted on the ATB loan. On February 28, 2021, ATB called its security.
- [6] ATB and KEL entered into a forbearance arrangement, ultimately extended to September 8, 2021.
- [7] A company called 2101122 Alberta Ltd. (210) then took an assignment from ATB of the ATB security, together with an assignment of shareholder loans due from KEL to certain of its shareholders, and 210 then agreed to continue the forbearance to November 19, 2021. The debt at that time was about \$1.5M. 210 also agreed to make further advances to KEL.
- [8] The security given by KEL to 210 included a provision for the appointment of a receiver in the event of default.
- [9] The loan fell into default again. 210 demanded repayment on December 21, 2021.
- [10] On August 15, 2023, 210 assigned its security to the applicant 253.
- [11] The debt is now about \$2.45M.

III. KEL's Business and Proposed Sale Agreement

- [12] The only assets of KEL are two commercial condominium units in Edinburgh Place, one of which is fully occupied and one of which is only partially occupied. Those units are leased for an aggregate of about \$10,000 per month. KEL's expenses are about \$31,000, resulting in a deficit which grows by \$21,000 per month.
- [13] KEL has no other creditors.
- [14] KEL has no employees.
- [15] Previous efforts to sell the units in 2018 and 2019 at aggregate prices of \$2.6M and 2.33M were unsuccessful. The purchase price agreed to between 253 and KSV as the proposed receiver is calculated based on a credit bid of the amount of the outstanding loan plus \$40,000 plus a receiver charge of \$30,000. The purchase price is estimated to be \$2,538,000.
- [16] As at October 1, 2023, the units were appraised at between \$584,000 and \$730,000 in the aggregate.
- [17] KEL consents to the receivership and sale.
- [18] In short, two years ago 210 took an assignment of a loan to and security from a debtor already in default, agreed to make further advances to that debtor on the existing security and an assignment of shareholder loans from that corporation which could not pay its existing debt, made further advances of about a million dollars, and then assigned its security four months ago to a third corporation, which waited until now to appoint a receiver and buy the only assets of the corporation for approximately 3.5 times their appraised value.

IV. Appointment of Receiver

[19] Recognizing that the appointment of a receiver is an equitable remedy, counsel for the secured party in their bench brief review the well-known factors to be considered by a court in determining whether it is just an equitable that a receiver be appointed. Those factors are summarized in *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Company*, 2002 ABQB 430, and I do not propose to restate them. I will, however, review certain of those which cause me some concern.

1. The risk to the security holder. There is none here. The security holder 210 had been working with the debtor KEL for two years. 210 held its security as trustee for Mattaliano Investment Corp. Francesco Mele, a director of 210 and 253, signed the assignment of security for both Mattaliano and 253. Clearly, he, as principal of 253, is aware of the cooperation between 210 and KEL and knows from KEL's consent to the proposed receivership that that cooperation will continue.
2. The nature of the property. The only asset consists of two commercial condominium units which require little or no management or preservation and are not subject to waste.
3. Whether the security holder expects difficulty with the debtor or others. There will be none here with the debtor. The debtor agrees to the appointment and subsequent sale, and it has no other creditors. The difficulty anticipated is with a minority shareholder of KEL. I rely not on the affidavit of Ms. Mills for this but on the frank disclosure by counsel for 253 that there is internal discord between Colgrove as a minority shareholder and KEL involving allegations of oppression. But a consent receivership which merely replaces KEL as a vendor with a receiver as a vendor in my view is of no great assistance in quelling that discord.
4. Whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently. Here, there is no need. KEL as a cooperative debtor could quit claim its interest to 253. A consent foreclosure could be used. Various share purchase and sale options could be investigated.

[20] As a general rule, courts should not interfere with legitimate business decisions made by business people. But in this case, the court is being asked to grant a discretionary remedy in order to legitimize a transaction which the parties are concerned might otherwise give rise to further claims by a disgruntled minority shareholder. Those claims apparently exist independently of any action by the existing debtor or proposed purchaser.

[21] With other viable alternatives available, I see no need for the court's involvement in appointing a receiver for the very limited purpose of transferring this property.

V. "Quick flip" or "Pre-Pack" Transactions

[22] Counsel for 253 refer as well to the authority of a court to pre-approve transactions proposed by a receiver for the quick and efficient monetization of assets. Because I am not approving the receivership application, I need not focus on the principles associated with those transactions.

[23] I note, however, that the examples cited, including *Sanjel Corporation, Re*, 2016 ABQB 257 and *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009, involved complex, ongoing business operations where both the court appointment of a receiver and the court's pre-approval of a proposed transaction were found to be necessary to preserve value, jobs, and/or customers. Those factors do not exist here.

[24] For those reasons, the application is dismissed.

[25] I thank counsel for their comprehensive material and concise brief.

Heard on the 14th day of December, 2023.

Oral Decision delivered in Edmonton, Alberta on the 14th day of December, 2023.

Dated at the City of Edmonton, Alberta this 15th day of December, 2023.

J.S. Little
J.C.K.B.A.

Appearances:

Cassels Brock & Blackwell LLP, Jeffrey Oliver and Danielle Marechal
Counsel to the Applicant 253

Stikeman Elliott LLP, Karen Fellowes
Counsel to KSV Restructuring Inc.