IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Western Bank v. Quarry Rock Developments (McAllister) Inc.,* 2024 BCSC 2328

Date: 20241220
Docket: S238711
Registry: Vancouver

Between:

Canadian Western Bank

Petitioner

And

Quarry Rock Developments (McAllister) Inc., Quarry Rock Developments (McAllister) Limited Partnership, Lawson Acquisitions Ltd., Willis Developments Inc., and Quarry Rock Developments Inc.

Respondents

Before: The Honourable Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioner:	P. Rubin
Counsel for the Respondents:	S. Turner
Counsel for the Receiver, Alvarez & Marsal Canada Inc.:	C.D. Brousson A. Mojtahedi
Counsel for Vancouver Ready Mix Inc.:	B. Lorimer
Counsel for NorthStar Acquisitions Ltd.:	T. Jeffries
Counsel for the City of Port Coquitlam:	S. Manhas
Place and Date of Hearing:	Vancouver, B.C. November 20, 2024
Place and Date of Judgment with Written Reasons to Follow:	Vancouver, B.C. November 20, 2024

Place and Date of Written Reasons: Vancouver, B.C.
December 20, 2024

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Introduction

[1] On November 8, 2024, the Receiver, Alvarez & Marsal Canada Inc., filed an application to approve its activities and also, approve a sale of the development property held by the respondents (collectively, "Quarry Rock").

[2] Prior to the hearing, Quarry Rock, supported by a lien holder, sought an adjournment to pursue enquiries with a previously identified potential purchaser.

[3] After hearing submissions, and considering the materials before me, I exercised my discretion to refuse the adjournment request with reasons to follow. These are those reasons.

[4] By way of a postscript, after the lunch break, I heard the Receiver's applications and, specifically, I approved the sale of the development property to NorthStar Acquisitions Ltd. ("NorthStar").

Background Facts

[5] Quarry Rock is the owner of lands which were acquired for the purpose of constructing a five-storey mixed use development located in Port Coquitlam, BC, to be known as "The Met" (the "Project").

[6] The petitioner, Canadian Western Bank ("CWB") agreed to provide financing to Quarry Rock for the development of the Project.

[7] In fall 2023, Quarry Rock defaulted in its obligations to CWB. Around that same time, various builders' liens were registered against the Project.

[8] On December 21, 2023, CWB commenced this petition proceeding, seeking the immediate appointment of a receiver.

[9] On January 19, 2024, Quarry Rock filed its response to the petition opposing the appointment of a receiver. In that response, Quarry Rock indicated that it had been discussing a disposition of the Project to various potential purchasers. Quarry

Rock also identified that it had entered into a purchase and sale agreement (PSA) "in principle" with NorthStar to acquire the Project at Quarry Rock's cost.

[10] On February 22, 2024, with the consent of Quarry Rock, the Receiver was appointed by this Court; however, the appointment was not effective until April 2, 2024, in the event that Quarry Rock had not provided confirmation that NorthStar had waived or satisfied conditions under the agreement dated January 18, 2024, to acquire the Project by that date. In the event of the appointment becoming effective, the Receiver was to proceed to market the Project and seek court approval of any proposed sale.

[11] On March 25, 2024, Quarry Rock entered into a PSA with Mosaic Seniors Care Society ("Mosaic") to purchase the Project for $25 million, which was described as a "backup offer" if the NorthStar PSA did not become unconditional. The Mosaic PSA provided for various conditions which were for the sole benefit of Mosaic and which could be waived within 45 days after acceptance.

[12] On April 2, 2024, no unconditional agreement between Quarry Rock and NorthStar had materialized; therefore, the Receiver's appointment became effective immediately.

[13] As of April 2, 2024, Quarry Rock owed approximately: $12.7 million to CWB; $10.5 million to builders lien claimants; and $700,000 to unsecured creditors.

[14] The sale activities of the Receiver after April 2, 2024, are outlined in its First Report to the Court dated November 7, 2024, and in its Supplement to the First Report dated November 19, 2024 (the "Supplement Report"). I would summarize the Receiver's activities as follows:

a) Discussed with Quarry Rock the potential of advancing the Mosaic transaction, including as an "as-is where-is bid" and obtaining the offered deposit of $750,000;

b) Reviewed proposals from brokers in respect of a sales process, leading to the engagement of Colliers Macaulay Nicolls Inc. (“Colliers”) as the exclusive listing agent;

c) On April 24, 2024, Colliers launched the sales process to market the Project at an asking price of $18.5 million;

d) Retained Altus Group Limited (“Altus”) to prepare an appraisal of the Project, indicating a market value, with assumptions, of $16.8 million as of May 16, 2024;

e) On June 13, 2024, the Receiver received a letter of interest (“LOI”) from BC Frontier Housing Society (“Frontier”), a non-profit society with a focus on bringing rental housing to the BC market. The Frontier LOI referred to a purchase price for the Project of $28.4 million;

f) Colliers’ marketing report dated November 4, 2024, indicates substantial exposure of the Project to the market. Between May 1, 2024, and May 13, 2024, information was emailed to approximately 3,500 agents and/or potential interested parties. A number (31) of confidentiality agreements were signed to allow interested persons to access the data room;

g) As a result of the marketing process, four offers were received from various purchasers, including NorthStar, ranging from $8-$13.25 million; and

h) On September 19, 2024, after further negotiations with the four offerors, the Receiver entered into a PSA with NorthStar for a purchase price of $10 million, subject only to court approval being obtained no later than November 21, 2024. A deposit of $1 million was obtained. It was this offer that was presented for approval on November 20, 2024.

[15] In accordance with Practice Direction PD-62 (“Sealed Bid Process for Foreclosures and Other Matters Involving Sales of Land”) (“PD-62”), the Receiver later received three sealed bids, including a second bid from NorthStar.

[16] On November 20, 2024, these sealed bids were before the court in the Receiver’s Confidential Supplement to its First Report dated November 20, 2024 (the “Confidential Report”). The Receiver sought and obtained approval to seal the Confidential Report pending the completion of any sale approved by the Court, in accordance with *Sherman Estate v. Donovan*, 2021 SCC 25.

[17] I would emphasize at this time that no one takes issue with the sales process conducted by the Receiver with the assistance of Colliers, as being inconsistent with the factors set out in *Royal Bank of Canada v. Soundair Corp.*, (1991) 4 O.R. (3d) 1, 1991 CanLII 2727 (C.A.). No one disagrees that the Project has been sufficiently exposed to the market and that potential offerors have been notified of the purchase opportunity and have either submitted an offer or had the opportunity to do so. No unfairness in the sales process is alleged.

Adjournment Application

[18] Quarry Rock, supported by Vancouver Ready Mix Inc., a lien holder, sought a short adjournment of this application to the next day so counsel could speak to their client.

[19] The sole reason advanced for the adjournment was to allow Quarry Rock to seek out Frontier to determine the status of the Frontier LOI and “get an offer in from Frontier”. However, counsel for Quarry Rock presented no evidence in support of its adjournment request, including in relation to Frontier, despite knowing that it was opposed by the Receiver and CWB.

[20] The Receiver and CWB opposed any adjournment. The Receiver presented evidence relevant to the adjournment request, being its Supplement Report. In particular, the Receiver was concerned about losing the NorthStar bid (which

required court approval no later than the next day) or any other bids that had been received under the sealed bid process.

[21] NorthStar, and the other bidders, were present on the application to see the outcome of the sealed bid process. Frontier was not.

Discussion

[22] The Court must exercise its discretion in considering any adjournment request. Matters that are considered will include the reasons for the adjournment, whether they are reasonable and whether they are timely. On such an application, the Court will also weigh the relative prejudice that may arise if the adjournment is granted or refused: *Sidoroff v. Joe*, 76 B.C.L.R. (2d) 82, 1992 CanLII 1815 (C.A.); *Navarro v. Doig River First Nation*, 2015 BCSC 2173.

[23] It is not entirely uncommon for debtors to oppose a sale approval application. Unfortunately, a debtor often stands to lose its entire interest in the property and face losses that may be the subject of guarantee claims. At times, a debtor will seek more time to undertake efforts to find another potential and better sale or even a refinancing. The same can be said with respect to the holder of other subordinate interests who face a lack of equity to pay all or a portion of their claims.

[24] Given the offers presented by the Receiver on this application, it was certainly the case here that court approval of any of them would not result in Quarry Rock fully repaying CWB and that the subordinate lien holders, the many other unsecured creditors, and Quarry Rock would suffer total losses.

[25] As stated in *QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation*, 2024 BCCA 318 [*QRD BCCA*], the interests of all stakeholders are to be considered in respect of any proposed sale:

> [70] The receiver was bound, of course, to protect the interests of the creditors and to obtain the highest price it could for their benefit. Indeed, the interests of the creditors (which would include in this case those who were unlikely to be paid out under the Redekop arrangement) has been said to be the *primary* concern of a court-appointed receiver: see Galligan J.A. in *Soundair*, at 12 and Goodman J.A., dissenting, at 23. But the interests of

> "*all*" parties, including the Debtors and the personal guarantors of MCAP's mortgage, are also required to be considered.

[26] A recent example of that scenario, an example that has some relevance here, arose in this Court in *MCAP Financial Corporation v. QRD (Willoughby) Holdings Inc.*, 2024 BCSC 1959 [*QRD BCSC*]. The similarity between the debtor in that case and the respondents herein is not a coincidence, in that "QRD" is short for "Quarry Rock Developments", the same companies involved here, but in relation to a different development project.

[27] In July 2024, in *QRD BCSC*, Justice Walker approved a sale of the development property. In doing so, he rejected an adjournment application in relation to a potential offer from Foundation Residence Society ("FRS") which, like Frontier, is focused on building rental housing, and which was backed by "BC Builds", a government program. Walker J. found that the potential of an offer from FRS/BC Builds was speculative: para. 3. He refused the adjournment and approved the sale to another party.

[28] On appeal, in *QRD BCCA*, the Court of Appeal found that this Court erred in failing to grant the debtor additional time to pursue the FRS/BC Builds offer, stating:

> [72] In all the circumstances, it seems to me that the 'balancing' process carried out by the court below was not done in a manner that was fair and could be seen to be fair by all parties. Respectfully, I conclude that the chambers judge erred in proceeding to grant the Asset Vesting Order without giving additional time — say two to four weeks — so that all parties could be satisfied either that the BC Builds offer could not be firmed up appropriately, that it was simply not worthwhile to wait any longer, or that the fair market value of the property was in the vicinity of $34 million.

[29] In the result, the sale in *QRD BCSC* was only upheld on appeal because the debtors had not sought to introduce any "new or fresh" evidence that, pending the appeal, they had been successful in firming up with FRS/BC Builds offer: *QRD BCCA* at paras. 74-79.

[30] The decision in *QRD BCCA* was of course based on the specific facts present in that case, circumstances which the court described as "unusual": para. 75. The

decision turned on those unique circumstances and the result here, in terms of an adjournment, is not necessarily driven by that decision.

[31] As such, in light of Quarry Rock's adjournment application relating to Frontier, and the comments in *QRD BCCA*, this Court was required to fully consider the history of the Receiver's sale efforts and specifically, the Receiver's dealings with Frontier in the context of the sales process and Frontier's LOI itself.

[32] Firstly, I was fully satisfied that the Receiver had made substantial efforts to engage Frontier in the sales process some months ago. In addition, I was satisfied that Frontier was given a fulsome opportunity in the months leading up to the Court hearing to firm up its offer, if it was a true offer, for consideration by the Receiver.

[33] In particular:

a) May 28, 2024: the Receiver spoke with Quarry Rock's former management to discuss efforts being made by Quarry Rock to work with Frontier/BC Builds to advance a transaction. As it did previously with respect to the Mosaic PSA, the Receiver reinforced to Quarry Rock that, in order to advance a transaction, a deposit would need to be received, and conditions would need to be removed from any transaction to be Court approved. The Receiver suggested that a logical next step would be to have Frontier's counsel (unknown at the time) contact the Receiver's counsel;

b) June 13, 2024: Frontier's counsel sent the Frontier LOI to the Receiver's counsel, noting that it is not "completely in line with what a Receiver would expect to see format- or content-wise";

c) June 14, 2024: the Receiver's counsel sent an email to Frontier's counsel seeking to arrange a call to better understand the Frontier LOI;

d) June 25, 2024: Frontier's counsel and the Receiver's counsel held a call to discuss the Frontier LOI;

e) August 2, 2024: the Receiver's counsel sent an email to Frontier's counsel to follow up from the earlier call. In that email, counsel for the Receiver provided Colliers' contact information, should Frontier's counsel require any further assistance or information with respect to the sales process;

f) August 2, 2024: Leigh Angman, Chairman of the Board of Frontier, and Colliers exchanged emails in respect of the sales process and Frontier's efforts to obtain financing from BC Builds. Colliers confirmed they were the listing agent and indicated that they would circulate a draft form of PSA to Mr. Angman;

g) August 7, 2024: Frontier acknowledged receipt of the draft form of PSA from Colliers;

h) August 13, 2024: Colliers followed up with Frontier to see if they had any questions. Frontier responded, indicating that they hoped to have a letter of support from BC Builds within the week and indicated that BC Builds may have difficulty advancing a transaction until after the provincial election;

i) September 20, 2024: Frontier spoke to Colliers, who advised Frontier of the accepted NorthStar offer which was still not yet unconditional. Apparently, by then, Frontier had received an LOI from BC Builds to fund the Project (which the Receiver had not seen);

j) September 23, 2024: Mr. Angman advised a representative of the City of Port Coquitlam (the "City") of the BC Builds LOI. Mr. Angman further said that he understood that the only way for Frontier to buy the Project was to assume that NorthStar would remove all conditions and that, if that occurred, Frontier had to be prepared to advance a subject-free offer at the court application. Mr. Angman indicated that he needed to come to a suitable arrangement with the City regarding its option to remain on title;

k) November 7, 2024: pursuant to PD-62, Colliers emailed 32 potentially interested parties, including Frontier, to notify them of the court hearing date of November 20, 2024. Colliers invited all parties to provide a competing offer for consideration by the Court under PD-62;

l) November 7-14, 2024: the Receiver's counsel served an unfiled notice of application on Frontier's counsel via email, even though they did not request to be on the service list. Paragraph 29 of the Receivership Order required that a party request that they be added to the list for service purposes. The Receiver also served various other parties, including lien holders, despite the fact that they did not request that they be placed on the service list; and

m) November 15, 2024: the Receiver served the filed application on Frontier's counsel at his request, again despite that they had not requested to be placed on the service list.

[34] The above chronology is starkly different than what was before this Court in *QRD BCSC* and therefore the result in *QRD BCCA* can be distinguished to the extent that the Court of Appeal would have afforded the debtor more time to investigate a potential offer.

[35] Firstly, the distinctions lie in respect of the Receiver's consideration of Frontier's LOI as it moved through the sale process: *QRD BCCA* at para. 63. In particular, beginning many months ago, the Receiver engaged or sought to engage with Frontier in respect of any offer: paras. 66 and 71. The Receiver did not simply move to NorthStar's bid without regard for any other offer that might arise, particularly by the Receiver's use of PD-62 by calling for any sealed bids: para. 67.

[36] By any measure, Frontier has been given ample opportunity to present an offer. They have not done so, nor is there is any evidence that they are even presently considering doing so.

[37] Secondly, a consideration of the adjournment required a close examination of the Frontier LOI. The Receiver suggests that the LOI is not a "real" offer, in the sense of being a realistic opportunity that, if more time was allowed to Frontier, could reasonably be pursued.

[38] I agree that the following aspects of the Frontier LOI give rise to that very inference:

a) The Frontier LOI appears to have arisen only because Mosaic, which is associated with Frontier, was unable to proceed with Mosaic's PSA dated March 25, 2024. The Frontier LOI refers to it being a "transfer [of] the [Mosaic] sale" to Frontier;

b) The Frontier LOI is very much simply an expression of *interest* and is expressly non-binding. It is not an offer. It is expressly stated to not exhaustively list the deal points and it refers to the fact that additional details will be required to complete the transaction. In *QRD BCSC* and *QRD BCCA*, FRS had executed a contract of purchase and sale, but BC Builds had similarly only provided a "letter of interest": *QRD BCCA* at paras. 19-20;

c) The purchase price under the Frontier LOI is $28.4 million. As in *QRD BCCA* at para. 15, there is no information as to how that price was arrived at;

d) Frontier's purchase price ($28.4 million) was significantly higher than all other initial offers, in addition to the sealed bids that arose from the PD-62 process, being in the $10-$12 million range. Similarly, in *QRD BCSC* and *QRD BCCA*, FRS' offer of $64 million was significantly higher than the other offers in the $35-$37 million range: *QRD BCCA* at paras. 12–15. It is a curious fact that Colliers' lengthy marketing efforts, enhanced by a later negotiations process, only yielded offers that were all *millions of dollars* less than what Frontier was apparently offering under its LOI;

e) The purchase price under the Frontier LOI was also far in excess of the listing price of $18.5 million;

f) Frontier's LOI purchase price was also far in excess of the appraisal value of $16.8 million. In other words, the appraisal indicated a value *millions of dollars* less than what Frontier was apparently offering. In *QRD BCCA*, the Receiver did not have any appraisal evidence: paras. 8, 50, 68–69, 72 and 75;

g) The purchase price under the Frontier LOI is subject to the unusual condition that the Receiver agree to a "VTB [vendor take back] Mortgage" of up to $9.8 million, about 35% of the total purchase price. Even more unusual, the condition was that this VTB amount would bear no interest "until project cash flow allows for its repayment". This term, albeit somewhat ambiguous, is similar to what was considered in *QRD BCSC* and *QRD BCCA*, where the VTB amount in FRS' offer varied but landed in a sum that was about one-third of the total price, was payable over 10 years and bore no interest: *QRD BCCA* at para. 19. There is no indication as to how Frontier was going to provide assurances as to that ultimate repayment, whenever it would be made. In my view, in reality, such a provision was really only to an illusory payment that, on the surface, created a very inflated purchase price;

h) The Frontier LOI specifically provided that Frontier would honour an option agreement with the City. This is similar to the process undertaken by other offerors who also agreed to accept the City's option to purchase certain commercial space that is registered on title of the Property. In other words, Frontier had the same ability to negotiate with the City as the other bidders, but the Receiver was not advised that any such arrangements were made;

i) By the time of the filing of the Supplement Report on November 19, 2024, Frontier had not delivered any completed offer document that could

potentially be considered for acceptance by the Receiver. Similarly, at no time did Frontier deliver any deposit in respect of the Frontier LOI, which required a $750,000 deposit within two business days of the fulfillment or waiver of all conditions precedent; and

j) There is no indication that Frontier made any effort toward satisfying the substantial conditions precedent in the Frontier LOI, which included a feasibility study, Frontier's review of title and all reports and studies, and physical investigations. The Frontier LOI required that the conditions be fulfilled or waived by July 19, 2024, and closing occur by August 31, 2024. By all accounts, Frontier's efforts with respect to the Project basically began and ended with the presentation of the LOI, save for some discussions with the City.

[39] All of the above aspects of the Frontier LOI would strongly suggest that Frontier's expression of interest was just that, and that Frontier was either unable or unwilling to advance that interest toward a serious offer that could be considered by the Receiver within the context of the sales process, despite having been afforded a substantial amount of time to do so.

[40] It also bears emphasizing that Frontier made no efforts whatsoever to attend this court hearing of which it was well aware. It was entirely open to Frontier to attend and advise the Court as to the status of its LOI, and possibly advance an argument that it needed more time to firm up its offer, perhaps with BC Builds.

Conclusion

[41] I have considered all of the evidence before me in the context of a balancing of the interests of all parties concerned. Overall, I consider that the Frontier LOI had no substance in terms of presenting a viable alternative to the offers that were before the Court.

[42] I have also considered the relative prejudice to the parties. I acknowledge that proceeding to address the other offers – which, if approved, would lead to a

significant shortfall – is prejudicial to Quarry Rock and the other creditors. However, without any viable alternative or even any indication of the possibility of a realistic alternative, any delay would simply result in further expense and loss to CWB at some future date when the lack of any viable alternative would simply be reconfirmed.

[43] I would exercise my discretion to refuse the adjournment request. Nevertheless, I noted to Quarry Rock's counsel that the matter would proceed after the lunch hour and he might use that time to seek out the information regarding Frontier that he referred to during his submissions. By way of postscript, Quarry Rock's counsel did speak to a lawyer at the offices of Frontier's legal counsel, but they were not available to appear on the later sale application that proceeded in the afternoon.

"Fitzpatrick J."