Court File No. CV-22-00683167-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ROYNAT INC.

Applicant

and

2796996 ONTARIO INC.

Respondent

BOOK OF AUTHORITIES OF THE RECEIVER

(Motion Returnable June 22, 2023)

June 16, 2023

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TO: Service List

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LIST OF AUTHORITIES

Tab 1

Court File No. B22/91

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

BANK OF AMERICA CANADA

Plaintiff

- and -

WILLANN INVESTMENTS LIMITED
and CRANBERRY VILLAGE, COLLINGWOOD INC.

Defendants

Counsel:

Harry Underwood for the Receiver, Coopers & Lybrand Limited

Stephen Schwartz for Prenor Trust Company of Canada

Frank Bennett and John Spencer for the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario

Heard: June 28, 1993

Farley J.

This was a motion for an order approving the Receiver's activities and fees (including the fees of its counsel) as set out in the Receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid morning today with no advance

notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J's original order establishing the receivership to allow for after-the-fact approval of the Receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the Receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993); see pp. 16-8. I again note that Mr. Bennett in his own text: F. Bennett, Receiverships (1985: Carswell, Toronto) said at p. 297:

> One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the Receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

It does not seem to me that approval of the activities of the Receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this Court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however such approval (if given) would be to the extent that the reports accurately summarized the material activities of the Receiver. As to inherent jurisdiction, see 80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd. et al (1972), 25 D.L.R. (3d) 386 (Ont CA) at pp. 389-90.

I pause to note that it would be unusual and illogical that the Receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

It seems to me that a receiver should be able to come to court and bare its breast . Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court

feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust which will ultimately bear the cost was supportive of the receiver. While "expensive", I found the fees in line with the complications and protractions of this receivership.

Costs were asked for in this instance. Mr. Bennett submitted that a costs award against the Crown would discourage creditors in general from appealing and objecting . That should of course be avoided where creditors have taken a reasonable position; in other words, the mere fact that a creditor is not successful in persuading a court of the rightness of its position

should not subject that creditor to a costs sanction. However I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project. Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time . Costs are awarded against the Crown

payable forthwith to the Receiver in the amount of $1500 and Prenor Trust $500.

Farley, J.
June 28, 1993

6p

Tab 2

CITATION: Pinnacle v. Kraus, 2012 ONSC 6376
COURT FILE NO.: CV-12-9731-00CL
DATE: 20121109

SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST

RE: Pinnacle Capital Resources Limited in its capacity as general partner of Red Ash Capital Partners II Limited Partnership, Applicant

AND:

Kraus Inc., Kraus Canada Inc., Strudex Fibres Limited and 538626 B.C. Ltd., Respondents

BEFORE: L.A. Pattillo J.

COUNSEL: *Linc Rogers* and *Jenna Willis*, for the Receiver

Larry Ellis, for the Applicant

Raymond Slattery and *David Ullmann*, for Equistar Chemicals, LP

HEARD: November 7, 2012

ENDORSEMENT

Introduction

[1] This matter involves two motions.

[2] The first is by PricewaterhouseCoopers Inc. ("PwC") in its capacity as Court-appointed receiver (the "Receiver") of the respondents Kraus Inc. ("Kraus"), Kraus Canada Inc. ("Kraus Canada"), Strudex Fibres Limited ("Strudex") and 538626 B.C. Ltd. (collectively, the "Companies") for, among other things, an order discharging it and releasing it from any and all further obligations as Receiver, upon filing its discharge certificate.

[3] The second is a motion by Equistar Chemicals, LP ("Equistar") for a) An order varying paragraph 8 of the Sale and Approval and Vesting Order dated June 11, 2012 by unsealing the confidential appendices; b) An order directing PwC to provide answers to questions posed by Equistar; and c) An order directing PwC to pay Equistar $35,425.25.

Background

[4] Red Ash Capital Partners II Limited Partnership was a secured creditor of the Companies.

[5] The applicant Pinnacle Capital Resources Limited, in its capacity as general partner of Red Ash Capital Partners II Limited Partnership ("Red Ash"), obtained an order of the Court dated May 28, 2012 appointing PwC Interim Receiver of Kraus, Kraus Canada and Strudex (collectively the "Operating Companies") In that capacity, PwC filed two reports, the first dated May 29, 2012 and the second June 10, 2012.

[6] On June 11, 2012, again on Red Ash's application, PwC was appointed trustee in bankruptcy of each of the Operating Companies. On the same day, and pursuant to Red Ash's receivership application, PwC was appointed as Receiver of the Companies.

[7] Also on June 11, 2010, the Court issued a Sale Approval and Vesting Order approving a going concern sale transaction (the "Sale Transaction") of substantially all of the assets of the Companies (the "Purchased Assets") contemplated by an asset purchase agreement between the Receiver and Kraus Brands LP (the "Purchaser"), a party related to Red Ash, dated as of June 11, 2012 (the "Sale Agreement").

[8] Paragraph 8 of the Sale Approval and Vesting Order provides that the documents marked as Confidential Appendices A, B and C to the Receiver's First Report contain confidential information and shall remain confidential and shall not form part of the permanent court record pending further order of the Court.

[9] The Sale Transaction closed on June 11, 2012.

[10] The reasons for the interim receivership were set out in the material filed in support of the initial application. The Interim Receiver monitored the receipts and disbursements of the Companies but did not take possession of the assets of the Operating Companies nor did it manage or operate their businesses. The Interim Receivership ended when the Receivership Order became effective on June 11, 2012.

[11] Pursuant to the Receivership Order, the Receiver had a very narrow mandate. It was appointed specifically to complete the Sale Transaction in accordance with the Sale Agreement and convey the Purchased Assets "without taking possession or control thereof".

[12] During the period of the Interim Receivership, and as suppliers received notice of the application to appoint a receiver of the Companies, the Interim Receiver and/or the Companies received claims for the repossession of property pursuant to s. 81.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). As at June 11, 2012, the date of the Sale Approval and Vesting Order became effective, a total of nine claimants, including Equistar, had delivered 81.1 claims totalling $2,248,734.

[13] Because certain of the Purchased Assets were subject to the s. 81.1 claims (the s. 81.1 Assets), the Sale Approval and Vesting Order provided in paragraph 6 thereof that the s. 81.1 Assets do not vest in the Purchaser until such time as the applicable s. 81.1 claim is determined by agreement of the parties or by further order of the Court. The Sale Approval and Vesting Order further provides that, notwithstanding the foregoing, the Purchaser is entitled to use and consume any s. 81.1 Asset, provided the Purchaser pays to the Receiver, in trust, the invoice amount of any s. 81.1 Asset used and consumed by the Companies or the Purchaser.

[14] Paragraph 6 of the Sale Approval and Vesting Order required that the Receiver file a report advising as to the s. 81.1 Assets in the possession of the Companies as at June 11, 2012 and "to the extent ascertainable, as at May 28, 2012."

[15] In satisfaction of the requirement in paragraph 6 of the Sale Approval and Vesting Order, the Receiver filed its Third Report dated June 14, 2012. The Third Report contained a list of the s. 81.1 claimants, the steps by the Receiver to determine the s. 81.1 Assets in the possession of the Companies on June 11, 2012, the steps taken to segregate and preserve those assets and the inspections by s. 81.1 claimants. It also detailed the Receiver's attempts to determine the s. 81.1 Assets in the possession of the Companies on May 28, 2012.

Equistar's s. 81.1 Claim

[16] On June 8, 2012, the Receiver received a s. 81.1 claim in the amount of $551,951.00 from Equistar. Equistar supplied poly resin to the Companies.

[17] On June 12, 2012, a representative of Equistar attended at Strudex's premises and was shown the silos where Equistar's goods were normally delivered. The representative did a visual inspection of the goods remaining in the applicable silo and was provided production records for that silo. A digital meter reading of the silo was also taken in the presence of Equistar's representative.

[18] Subsequently, the Receiver assessed the s. 81.1 claims using the criteria set out in s. 81.1 of the BIA. The Receiver assessed the eligible value of Equistar's claim to be $35,425.25. On June 19, 2012, the Receiver advised Equistar of its assessment.

[19] On July 31. 2012, Equistar's US attorney sent a letter to the Receiver taking issue with the Receiver's determination of value. Equistar's position was that its claim should include all goods Equistar delivered within 30 days prior to May 28, 2012. It took issue with the challenges the Receiver reported it had faced in respect of assessing the status of the s. 81.1 Assets as at May 28, 2012 and requested further analysis.

[20] The Receiver responded to Equistar's attorney's letter on August 7, 2012. It provided further details as to Strudex's inventory system, records, tracking, etc. as well as specific detail in respect of the use of product supplied by Equistar to Strudex in the period between May 28 and June 11, 2012, according to the records available to the Receiver. The letter further stated that if Equistar wished to conduct further investigation of the matter, the Receiver would attempt to facilitate such investigation with the Purchaser. The Receiver heard nothing further from Equistar.

[21] In the period since June 11, 2012, the Purchaser used or consumed the s. 81.1 Assets subject to Equistar's claim that were in the Companies possession on June 11, 2012. In accordance with paragraph 6 of the Sale Approval and Vesting Order, the Purchaser paid to the Receiver, in trust, the invoice amount of the s. 81.1 Assets subject to Equistar's s. 81.1 claim that it used or consumed subsequent to June 11, 2012 in the amount of $35,425.25. The Receiver continues to hold such funds in trust pending agreement amongst the Purchaser and Equistar or further order of the Court.

Equistar's Motion

[22] The Receiver's discharge motion was originally returnable on October 16, 2012. At the request of counsel for Equistar who were retained on October 9, 2012, the motion was adjourned to November 5, 2012 "to permit further review by creditor". Equistar had been previously represented in the receivership proceedings.

[23] On October 24, 2012, Equistar's counsel sent a letter to the Receiver's counsel enclosing a list of 114 questions "for response by the Receiver in connection with the Receiver's impending motion for discharge."

[24] The questions cover a very broad range of topics, including:

a. the relationship between the Receiver and Red Ash and the extent of Red Ash's control over the actions and decisions of the Receiver and the funding of the receivership;

b. information available to proposed purchasers about the existence of s. 81.1 claims and the goods supplied by them;

c. the extent of the relationship between PwC and the Companies and the extent of control exercised by PwC in that capacity prior to its appointment;

d. the extent of PwC's control over the sale process;

e. any advice given by PwC to the directors and officers of the Companies related to their obligations with respect to trading while insolvent;

f. the decision to sell the cash gleaned from suppliers products as part of the assets on closing;

g. the Liquidation Analysis (Confidential Appendices C) and whether or not the Receiver considered the impact on unsecured creditors in evaluating same;

h. the decision to use the interim receivership structure and its impact on suppliers;

i. forecasts of consumption of supplier goods available to or relied upon by the Receiver; investigations conducted by the Receiver, as described in the Third Report, which relate to the extent of goods supplied by Equistar;

j. specific questions related to the quantities of the goods supplied by Equistar;

k. general questions about how the Receiver perceived the treatment of unsecured creditors and the suppliers, and what steps, if any it took to advise the relevant parties in connection with same.

[25] On October 31, 2012, the Receiver replied to the October 24, 2012 letter and advised that it had reviewed and considered Equistar's questions and in the Receiver's view, the questions were inappropriate, irrelevant to Equistar's s. 81.1 claim, had been dealt with in the Receiver's prior communications with Equistar and/or related to activities already approved by the Court. Accordingly, it advised that it would not be answering any of the questions.

[26] On November 5, 2012, the Receiver's discharge motion was put over to November 7, 2012 to enable Equistar to bring its motion to obtain the answers to the questions and unseal the Confidential Appendices. It further amended its notice of motion to also seek payment of $35,425.25

Law and Analysis

(a) The Questions

[27] A court-appointed receiver is an officer of the court and is in a fiduciary capacity to all stakeholders: *Nash v. C.I.B.C. Trust Corp.*, 1996 CarswellOnt 2185 (O.C.J. Gen Div.) at para. 6. The fact that the receiver owes fiduciary duties to stakeholders does not, however, entitle a stakeholder to go on a fishing expedition for information: *Turbo Logistics Canada Inc. v. HSBC Bank Canada* (2009), 81 C.B.R. (5th) 169 (Ont. S.C.J.) at para. 18.

[28] A court-appointed receiver is required to respond to reasonable requests for information from parties with an interest in the receivership: *Battery Plus Inc., Re* (2002), 31 C.B.R. (4th) 196 (Ont. S.C.J. [Commercial List]). What is reasonable must be determined, in my view, having regard to the interest of the requesting party and the relevance of the information sought based on the issue or issues. In addition, and as noted by Farley J. in *Bell Canada International Inc., Re* [2003] O.J. No. 4738 (S.C.J. [Commercial List]} at para. 9, the objectivity and neutrality of the officer of the court is also a factor to consider.

[29] Equistar submits that it is entitled to the answers to its questions in order to determine the correct amount of its s. 81.1 claim; who the directing minds were that caused the claim to arise; and whether or not any claim exists against any of the parties, including the Receiver for their actions in creating an unpaid debt owing to Equistar.

[30] The vast majority of the 114 questions relate to the Receiver's relationship with Red Ash and the Companies prior to and during the receivership as well as various steps during the receivership. Those questions have nothing to do with Equistar's s. 81.1 claim. Those questions are nothing more, in my view, than a fishing expedition to see if Equistar can uncover some sort of impropriety which it suspects may have occurred but of which it has no proof. In that regard, it is instructive that Equistar has provided no evidence of impropriety before or during the receivership. All it has are suspicions of impropriety which is not sufficient to elevate its questions into the reasonable category.

[31] Questions 12 and 13 and 75 to 97 relate for the most part to Equistar's s. 81.1 claim. The problem is that the Receiver has already answered Equistar's questions concerning its claim and provided it with all of its information. The Receiver duly and thoroughly investigated and provided all relevant facts it was able to obtain to Equistar. I would have thought that if Equistar

had any follow up questions, it would have contacted the Receiver directly with them. Equistar provided no evidence that it requires further information or that to its knowledge, the information is available and the Receiver has failed to provide it. In fact, it is a reasonable inference from a number of the questions that Equistar already knows the answer.

[32] The Receiver has no further information or documents relating to Equistar's claim. In my view, in responding as it has to Equistar's questions relating to its s. 81.1 claim, the Receiver has acted reasonably and in accordance with its duty. In the circumstances, it is not required, in my view, to answer Equistar's further questions which in the circumstances, are either irrelevant or unreasonable and in most cases, both.

[33] Equistar's motion in respect of the 114 questions is therefore dismissed.

(b) Unsealing the Confidential Appendices

[34] Equistar also seeks an order unsealing the Confidential Appendices as provided in paragraph 8 of the Sale Approval and Vesting Order.

[35] The First Report describes the three Appendices. Appendix A is a Confidential Information Memorandum prepared by PricewaterhouseCooper Corporate Finance with the assistance of the Companies management for the sale process in the fall of 2011. It describes the Companies business in significant detail. Appendix B is a detailed summary of the four highest offers received in December 2011 and the three revised offers received in January 2012 in respect of the sale of the Operating Companies. Appendix C is a Liquidation Analysis of assets and business of the Companies based on net book values as of March 31, 2012.

[36] In the First Report, the Receiver requested the sealing of the three Appendices from the public record until after closing of the Sale Transaction or further order of the court. As noted, paragraph 9 of the Sale Approval and Vesting Order provides that the Appendices contain confidential information and shall remain confidential and shall not form part of the permanent record pending further order of the court.

[37] Equistar submits that because the Sale Transaction is complete, there is no reason to continue with the sealing order and the documents should be unsealed. It submitted that the two circumstances justifying a sealing order as set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 (S.C.C.) are no longer present here.

[38] Counsel for Red Ash opposed Equistar's request to unseal the documents. It submits that given the Court determined, as part of the Sale Approval and Vesting Order, that the Appendices were confidential, Equistar's motion for unsealing should fail as it has not established that the documents are no longer confidential. In the alternative, it submits that the documents remain confidential. In respect of that submission, because it was only served with Equistar's motion material on the eve of the motion, Red Ash requests an adjournment in order that it can file material to establish that the documents in question still remain confidential.

[39] As Newbould J. pointed out in *Look Communications Inc. v. Look Mobile Corp.*, 2009 CarswellOnt 7952 at para. 17, it is often the case that on the Commercial List sensitive

documents concerning an asset sale are sealed in order to protect the sale process. Once that process has been completed, it follows that the information in the documents is no longer confidential.

[40] I am mindful of the importance of public disclosure in the courts as discussed in *Sierra Club*. I therefore think, given the circumstances in which the Appendices were sealed, that Red Ash should be required to establish that the documents in issue still remain confidential. Accordingly, I intend to adjourn that portion of Equistar's motion, to be brought back on with proper notice to Red Ash in order to allow it to properly respond.

(c) The $35,425.25

[41] The final relief requested by Equistar is the payment by the Receiver of the $35,425.25 it is holding in trust in respect of its s. 81.1 claim.

[42] The Sale Approval and Vesting Order provide in paragraph 6(b) that a s. 81.1 claim is to be determined "by court order or by agreement amongst the Receiver, the applicable claimant to the s. 81.1 Asset and the Purchaser". Paragraph 6 (e) provides that where the Purchaser pays the Receiver in trust for the s. 81.1 assets its used or consumed, the cash payment "shall stand in place and stead of the s. 81.1 Asset, with such cash to be disposed of in accordance with" the determination as provided in paragraph 6(b).

[43] There has been no court order or agreement with respect to Equistar's s. 81.1 claim. Equistar has not yet sought such determination. Accordingly, pursuant to paragraph 6 of the Sale Approval and Vesting Order, the $35,425.25 being held by the Receiver in trust cannot be disposed of until such determination.

[44] Equistar's request for payment of $35,425.25 is therefore dismissed.

The Receiver's Motion

[45] The Receiver's appointment was for the narrow purposes of completing the sale of the assets of the Companies and certain miscellaneous post-closing matters and reporting on the s. 81.1 assets in possession of the Companies at the time of its appointment and if possible, on May 28, 2012. Those purposes have been completed.

[46] All s. 81.1 claims except for Equistar's have been resolved. The Receiver proposes that it pay the $35,425.25 it is holding in trust on account of Equistar's s. 81.1 claim to be paid to the Trustee in Bankruptcy of the Operating Companies to permit Equistar's claim to be settled or resolved by court order in the bankruptcy. In my view, given that PwC is also the Trustee, this is a reasonable solution.

[47] The Receiver seeks a release and discharge from any and all claims arising out of its actions as Receiver save and except for gross negligence or wilful misconduct on its part. It is that request which prompted Equistar's list of questions. The release is a standard term in the Commercial List model order of discharge. In my view, in the absence of any evidence of

improper or negligent conduct on the part of the Receiver, the release should issue. A receiver is entitled to close its file once and for all. There is no such evidence here.

Conclusion

[48] Based on the material filed, the discharge order as requested by the Receiver should issue.

[49] Equistar's motion is dismissed except for the portion relating to the unsealing of the Confidential Appendices which shall be adjourned to be brought back on, if so desired, on proper notice to Red Ash and the Receiver.

[50] There will be no order of costs in respect of the Receiver's discharge motion. The Receiver is entitled, however, to costs in respect of Equistar's motion. In the absence of agreement, brief submissions of no more than two pages along with a cost outline shall be made by the Receiver within ten days. Equistar shall respond within ten days of receipt of the Receiver's submissions.

L. A. Pattillo J.

Released: November 9, 2012

Tab 3

Bank of America Canada v. Willann Investments Ltd.

Ontario Judgments

Ontario Court of Justice

General Division - Commercial List

Farley J.

December 23, 1992.

Dockets: 822/91 and 76984/91Q

[1992] O.J. No. 4201 | 1992 CarswellOnt 1743

Between Bank of America Canada, Plaintiff, and Willann Investments Limited and Cranberry Village, Collingwood Inc., Defendants

(7 paras.)

Counsel

H. Underwood, for Coopers & Lybrand Limited, Receiver and Manager.

P.A. Vita, Q.C. and *John C. Spencer*, for The Attorney General of Canada.

Steven P.H. Schwartz and *Ronald Moldaver*, for Prenor Trust Company of Canada.

Endorsement

FARLEY J.

1 The Receiver has brought a motion for approval of an agreement of purchase and sale with the Law Group. It seems to me that but for a couple of twists this would have been a straightforward matter. The subject property has been in receivership for close to a year and a half - to the extent that the property has developed a stigma of staleness and possibly worse. The proposed transaction's purchase price is reasonably classic to the most recent valuation obtained. The property has been well exposed and extensively marketed. It appears to have been the only "offer" in view at this time - however see my comments later concerning another possible interest. While it is true that there is only a $100,000.00 deposit and that is itself refundable if the purchaser in doing its due-diligence concludes that the property (and undertaking) is not economically viable, it is fair to observe that the complex is large and multifaceted. In this respect a 45 day due diligence period is not unreasonable particularly when it does not interfere with further marketing (although no new offer may be accepted in the 45 day period). I do not think that the size of the deposit nor the fact it is refundable is an indication that the purchaser is only trifling or is in a quick-flip option mode. This purchaser has been brought to the table by Prenor Trust which is the first position lender and also will be providing a significant amount (but certainly not all) of the purchaser's financing - albeit this should not be considered fresh money. The Receiver fears to lose the offer since the project has been accumulating a substantial deficit since the receivership began (approximately $1.8 million) and this continues to mount, especially during the slower winter months. As I have indicated, under ordinary circumstances I would have no problem in approving this offer which the Receiver is recommending and willing to sign before its expiry at 6 p.m. this evening.

I do not think that it is all that significant that what the Receiver is proposing is not a two-way signed deal subject to court approval since what it has is an irrevocable offer which it says it wishes to sign subject to receiving court approval. It certainly seems to be the only legitimate offer/deal available or that looks to be foreseeable.

What then are the twists?

2 The Attorney General for Canada has filed a letter of intent from 9923S5 Ontario Limited dated December 22, 1992 for a higher amount. Under ordinary circumstances the court-approval hearing should not be the forum for an auction or the foundation of a bidding war. However I note the following which even aside from this general principle would appear to be devastating for this letter of intent. It is from an "old" interested party with no explanation of its Johnny-come-lately status. It is a letter of intent at its maximum and indicates that an offer would not be forthcoming for about four weeks. It is dependent upon substantial financing from Prenor Trust which bas indicated that it would not participate. I do not think that it is appropriate to consider this "proposal" as one which the receiver should entertain in preference to the Law offer; in fact the Receiver has vigorously recommended against it.

3 The only two creditors who have any realistic shot at recovering anything out of a disposition of the property are (a) Prenor Trust (which is strongly in favour of the Law deal and is in fact giving significant financing for same) and (b) the Crown (both Ontario and Canada on a quasi-joint arrangement). While Prenor Trust is in first place on both the "Core" and "Non-Core" lands involved, the Crown is second but only with respect to the Core lands. The Law transaction - at the insistence of Prenor Trust as a condition of its financing - has made it a condition of the deal that a certain amount be allocated to the Non-Core lands, which amount is significantly in excess of what the latest appraisal would indicate. On that basis, with the costs of disposition, receiver's certificates etc., Prenor Trust would be allocated the balance and the Crown would go begging. If the allocation had been as per the latest valuation, then the Crown would have taken a bath but it still would be the recipient of a reasonable amount of funds.

4 This seeming "hocus-pocus" was justified by the Receiver and Prenor Trust on a number of bases:

(a) The terms of the Law financing by Prenor Trust involve a mortgage at substantially less than market rates; axiomatically if a market rate mortgage were provided, then the amount of the offer would have been reciprocally reduced - which would have eaten substantially into the Crown's potential recovery

(b) if the receiver's fees and costs were not allocated on a pro-rata basis across the board but based on the care and attention principle then the Non-Core property would be burdened with proportionately less of such costs and the Core lands with proportionately more. This would be another bite at the Crown's apple;

(c) the Crown has introduced the Johnson letter of intent. It is interesting to note that it is based upon a quite substantial increase in value allocation for the Non-Core lands (although not quite as much as the Law offer) over the most recent valuation. On that basis the Crown would also receive nothing. As noted before this offer suggestion is based upon Prenor Trust providing the "foundation" financing.

5 I think it appropriate to refer to *Royal Bank of Canada v. Sound Air Corp. (1991), 4 O.R. (3d) 1* (C.A.) for the principles contained therein. As to the first, I think that there can be no doubt but the Receiver has made a sufficient effort to get the best price and it has not acted improvidently. Concerning the second, has it considered the interests of all parties (which would include the Crown) when agreeing to an allocation of the purchase price which is significantly different from the latest valuation (recognizing that a sale is always a better indication of value of the particular property than a valuation - the ""real" versus "artificial" conflict - but in this case the real has a healthy degree of artificiality). Ordinarily I would think that the court would avoid approving such an arrangement - but in this case I think that this unusual arrangement must be looked at in context. The property has been long exposed - the only "rival" (if it can be elevated that far) bid involves a similar type of allocation which would net the Crown nothing - even if the proposer could convince Prenor Trust to change its adamant mind (as I was advised by counsel speaking with full authority from a Prenor Trust official present at the hearing). Then too if there is a reasonable

allocation of expenses, the Crown's potential recovery on a "straight" allocation basis would be substantially diminished. It would disappear if Prenor Trust were to change its mind re the financing and go to a straightforward commercial rate for the mortgage financing. I believe that this combination washes away the hocus-pokey. While at first look, the optics may not appear right; when one appreciates that one is already looking at a distorted image and there is a requirement for corrective lenses to get a clear image, the optics arc appreciated as not being "reality". I believe that a combination of these factors considered in the overall analysis and the first two questions resolve Sound Air's numbers 3 and 4 question. But for Prenor Trust advancing the Law offer (and making it possible with financing) there would be no offer at all to consider (certainly not the one in the letter of intent since it's contingent on Prenor Trust's willingness which it is not.) even after such a long and hard worked effort to obtain a deal for recommendation. As to the question of unfairness and the integrity of the system there was certainly nothing which prevented an earlier soundly based offer to be made by Johnston et al. if such had been truly possible. They (and many others) certainly knew of the proposed sale and the efforts of the Receiver to sell. Nothing in fact would have prevented the Crown if it had been so inclined to search out possible interested parties if it felt that the Receiver was not doing a proper job of marketing the property.

6 I am of the view that the Law offer should be approved. Order to issue as per my fiat.

7 Costs to the Receiver out of the subject assets in the amount of $3.500.00. No costs for or against Crown or Prenor Trust.

FARLEY J.

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ROYNAT INC.	-and-	2796996 ONTARIO INC.
Applicant		Respondent

Court File No. CV-22-00683167-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at
Toronto, Ontario

BOOK OF AUTHORITIES OF THE RECEIVER

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