



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00711609-00CL

DATE: Apr 25 2024

NO. ON LIST:2

TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. TORONTO ARTSCAPE INC.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

Name of Person Appearing	Name of Party	Contact Info
Rosemary Fisher	First Ontario	fisherr@simpsonwiggles.com
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Catherine Francis	Receiver, msi Spergel Inc.	cfrancis@foglers.com
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Name of Person Appearing	Name of Party	Contact Info
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Michelle Wright	City Of Toronto	Michele.A.Wright@toronto.ca
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Christopher Henderson	City Of Toronto	Christopher.Henderson@toronto.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver of Toronto Artscape Inc. brings this motion seeking, among other things, an order authorizing the Receiver to engage Avison Young Commercial Real Estate LP and, in conjunction with Avison, to carry out a sale process, a sealing order in respect of the appraisals and other commercially sensitive information regarding the properties, and an increase to the Receiver's borrowing charge.
- [2] The proposed sales process is in respect of the following:
- a. 20 live/work condominium units located at 38 Abell Street, Toronto (the "Abell Units");
 - b. Two residential condominium units at 210 Simcoe Street, Toronto (the "Simcoe Units");
 - c. 130 Queens Quay East, 4th Floor, Toronto ("Launchpad"); and
 - d. 180 Shaw Street, Toronto ("Youngplace").
- [3] No one opposes the proposed sale process in respect of Launchpad and Youngplace.
- [4] However, the City of Toronto (the "City") opposes the proposed sale process in respect of the Abell Units and the Simcoe Units. The City is not an economic stakeholder. However, among other things, the City is party to agreements that contain certain restrictions on changes, registered on title under s. 118 of the *Land Titles Act*.
- [5] No one else opposes the proposed sale process in respect of the Abell Units and the Simcoe Units.
- [6] The other relief sought by the Receiver on the motion (the increase to the borrowing limit, the sealing order, etc.) is unopposed.
- Should the Issues related to zoning and other restrictions, among other issues raised by the City, be determined prior to the commencement of the sales process for the Abell Units and Simcoe Units?*
- [7] The City of Toronto filed an extensive record over the past two days setting out their position on a number of complex matters, including the zoning and restrictions applicable to the Abell Units and the Simcoe Units. The Receiver disagrees with the City's position.
- [8] The Receiver is also of the view that the Court's consideration of the issues raised by the City is premature. In addition, the Receiver indicated that for the Court to consider these issues, the determination would have to be made "on a full factual record with the opportunity for all affected parties to file material and participate, not in a factual vacuum in advance of the Sale Process."
- [9] I advised the parties at the motion that the interpretation of the numerous issues raised by the City required a full factual record for the Court to consider. I further indicated that the determination of these

matters should not preclude the Receiver commencing the sales process, as it is authorized to do pursuant to the appointment order.

- [10] Depending on the outcome of the sale process, these issues may have to be before the Court on a full record at a later date prior to the issuance of an approval and vesting order.
- [11] The City submitted that if the Court declined to issue a ruling on the numerous matters raised at this stage, then amendments ought to be made to the proposed sale process in respect of the Abell Units and Simcoe Units “for disclosure, consultation and evaluation” in order to ensure “an efficient, fair and transparent process.”
- [12] The parties agreed to have discussions in advance of a return before me to attempt to narrow the outstanding issues related to the sale process for the Abell Units and Simcoe Units and the City’s request for disclosure, consultation, and evaluation.
- [13] **The matter is adjourned to May 2, 2024 at 10:30 am before me (90 minutes).** The parties may file briefs (up to 10 pages in length, double spaced), which should be filed at least one day prior to the appearance.
- [14] I informed the parties today that, based on the written submissions and oral submissions at the return of this matter on May 2, 2024, I would determine what requirements, if any, be included in the sale process for the Abell Units and the Simcoe Units to address the City’s request for disclosure, consultation, and evaluation.

Should the Requested Sealing Order be Granted?

- [15] The Receiver requests a temporary sealing order in respect of the confidential appendices, which contain the appraisal reports in respect of the four properties, unredacted summary of listing proposals, and listing proposal with market valuations.
- [16] The sealing orders sought are all in respect of materials that could taint the market if available prior to the sale process in respect of the properties being launched. The proposed order contains language that the sealing order would apply until further order of the court.
- [17] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. The Court also has inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.* (2010), 100 O.R. (3d) 510 (ONSC), at para. 34.
- [18] I am satisfied that the proposed sealing of the Confidential Appendices is appropriate in the circumstances. The Confidential Appendices contain confidential and commercially sensitive information regarding the properties. The information in the Confidential Appendices could taint the market and the sale process. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. As a matter of proportionality, the benefits of keeping the Confidential Appendices sealed for a limited period of time so as not to taint the sale process for the properties outweighs the negative effects of temporarily restricting public access to a limited amount of information.

[19] Having considered the test set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2022 SCC 41, at para. 45, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25, I am satisfied that it is appropriate to grant the requested sealing order.

[20] The Receiver is directed to provide the sealed Confidential Appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the Confidential Appendices can be physically sealed.

Increase to Borrowing Limit.

[21] Under the Receivership Order, the Receiver is empowered to borrow up to \$300,000. The Receiver seeks to increase the limit to \$600,000.

[22] The Receiver has already borrowed approximately \$170,000. The Receiver states that in order to continue operations, an increase in its borrowing powers is required.

[23] Order attached.

A handwritten signature in blue ink, appearing to be 'J. Lee', is located in the lower right quadrant of the page.