

Brendan Bissell

From: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Sent: Wednesday, November 10, 2021 4:05 PM
To: Brendan Bissell; Brendan Bissell; Asim Iqbal; Phil Gennis; Joel Turgeon; Mukul Manchanda
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: CWB Maximum Financial v. 4231 Sheppard Avenue East In et al (Court File No: 20-00650853-00CL) - Receiver's motion for approval of two sales and distribution and related relief in five estates
Attachments: Counsel Slip Nov. 10 2021).pdf; Order (balance of relief).pdf; Jubilee approval and vesting order.pdf; JGWI approval and vesting order.pdf; Brimely approval and vesting order (revised).pdf

Counsel:

See attached slip.

Endorsement:

This is a motion by msi Spergel Inc. in its capacity as court-appointed receiver ("Receiver") for approval and vesting orders in respect of three sale transactions in which the Receiver is the vendor, and for an order (i) approving the Receiver's Third Report, including the Receiver's activities described therein and the statements of receipts and disbursements appended for each Respondent estate, (ii) approving the Receiver's fees, costs and expenses and those of its counsel as set out in the fee affidavits, filed, (iii) declaring that the transaction contemplated by the pharmacy purchase agreement dated June 14, 2021 between the Receiver, as vendor and Raouf Basiliou in trust for a company to be incorporated (assigned to Guide Environment Inc.), as purchaser, for assets of the Respondent Bless Hui Pharma Inc., has been terminated, and that the Receiver is entitled to retain the deposit paid as liquidated damages, (iv) authorizing the Receiver to make distributions, subject to final determination where applicable, as described in paragraphs 79 to 124 of the Receiver's Third Report, (v) upon filing of the respective Receivership Completion Certificate (as defined in the proposed order) discharging the Receiver of the Respondents St. Mary Theotokos Pharma Inc., Westway Holdings Inc., St. Mary Cooksville Pharma Inc., SJ East Pharma Inc. and JM Westview Pharma Inc.; and (vi) sealing the confidential appendices to the Third Report pending the filing of the applicable Receiver's Certificate or further court order.

I have reviewed the motion materials including the Third Report of the Receiver dated November 2, 2021 and the Supplement to the Third Report of Receiver dated November 9, 2021.

With respect to the Jubilee and JGWI Transactions, I accept that the terms of the sale transactions are fair and reasonable in the circumstances, considering, among other things, the appraisals obtained, the costs involved in conducting a sale process, the possible results of a sale process considering that the properties are the subject of leases, and the costs and risks associated with any litigation to set aside the leases. I accept the Receiver's recommendation that approval be granted to these transactions. With respect to the Brimley transaction, the sale process was fair and reasonable and I accept that the transaction is the best transaction as identified by the Receiver and that its terms are fair and reasonable in the circumstances. I accept the Receiver's recommendation that this transaction be approved. In respect of these transactions, the criteria in *RBC v. Soundair* are satisfied.

With respect to the Bless Hui transaction, the purchasers are in default of their obligation to complete and close the transaction in accordance with its terms. I am satisfied that the Receiver is entitled to treat the transaction as failed and to retain the deposit paid as liquidated damages. In this respect, I accept the submissions made by the Receiver at paragraphs 42-46 of its factum.

With respect to the proposed distributions, I accept the submissions in paragraphs 47-51 of the Receiver's factum. Approval of the proposed distributions is appropriate in the circumstances.

With respect to approval of the Third Report and the Receiver's fees and activities, I accept the submissions in paragraphs 52-58 of the Receiver's factum.

The limited sealing order, as requested, is appropriate in the circumstances. The Confidential Appendices contain information that would be highly prejudicial if any future sale efforts were necessary. Copies of the Confidential Appendices are provided as part of the public motion record with minimal redactions.

Order to issue in forms of attached order signed by me.

A handwritten signature in blue ink, appearing to read "Cavanagh J.", is enclosed in a light gray rectangular box.

Cavanagh J.