

SUPERIOR COURT OF JUSTICE - ONTARIO

(Commercial List)

RE: Credit Union Central of Ontario Limited (Applicant) v. Heritage Property Holdings Inc. and Heritage Properties Development Inc. (Respondents)

BEFORE: Justice Cumming

COUNSEL: *M. Valente*, for the Interim Receiver

Derek Schmuck, for Construction Lien Holders

H. Whiteley, for the Applicant

R. Weston, for the Respondent Heritage Companies

DATE HEARD: April 3, 2007

ENDORSEMENT

[1] The Receiver (Mr. Valente as counsel) brings a motion for, *inter alia*, approval of its First Report.

[2] The Federated Guaranty and Trust Company (“Federated”) appears (Mrs. Weston as counsel), which claims to hold three mortgages against the subject property. Federated submits the sale process proposal by the Receiver by the Receiver be delayed until the golf course is in full operation and a going concern. The applicant credit union (Mr. Whiteley as counsel) supports the Receiver’s position.

[3] The lien claimants (Mr. Schmuck as counsel) support Federated’s position re the sale process. The lien claimants also move to lift the stay and have the liens determined before this Court in Hamilton.

[4] Following upon extensive submissions the motion of the lien claimants is adjourned to May 16, 2007 (one day).

[5] The results of the bidding process will be known by that date and the appraisal commissioned by the Receiver will have been received and disseminated.

[6] In the interim, counsel for Federated, the Applicant and for the lien claimants will meet in an attempt to resolve the quantum and priority issues relating to the lien claimants.

[7] The Receiver undertakes to give at least 10 days notice of the approval hearing, if such is to be.

[8] It is anticipated that any acceptance of a bid would be May 21, 2007 and the closing would be June 15, 2007.

[9] A review of matters will be made at the May 16, 2007 hearing at which time the Receiver can seek such further directions as seen to be appropriate.

[10] It would seem that there is a *de facto* bankruptcy of the debtor companies such that consideration should be made as to whether a bankruptcy is an appropriate course of action. There are a significant number of unsecured creditors. A determination will have to be made as to the validity of all claimed security.

[11] Mr. Berger, principal of the debtors, agrees that the property in Appendix "C" of the First Report of Receiver will be delivered as directed by the Receiver on or before April 10, 2007. Mr. Berger and 2017464 Ontario Inc. reserve the right to advance a claim in the estate in respect of ownership and/or distress for rent re some of such property.

[12] I remain seized of this matter.

[13] The Receiver is to deliver a copy of the appraisal report to Mr. Schmuck and to Mr. Weston. Such counsel accept the receipt of the appraisal report subject to the deemed undertaking rule. The Receiver has advised it will use its best efforts to open the golf course as soon as possible.

[14] Mr. McFaul is to disclose to the Receiver whether or not he is directly or indirectly a participant in a bid (subject to his coming to the Court to seek removal of this stipulation).

CUMMING J.

DATE: May 17, 2007