

Parisi, Josie

Subject: FW: [EXT] FW: Centurion Mortgage Capital Corporation v. 10268054 Canada Corp. et al.
- Court File No.: CV-20-00652174-00CL

From: Dietrich, Madam Justice Bernadette (SCJ)

Sent: January 14, 2021 1:25 PM

To: Dominique Michaud <dmichaud@robapp.com>; Samuel Mosonyi <smosonyi@robapp.com>

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Pera, Jonathan (JUD) <>

Subject: RE: Centurion Mortgage Capital Corporation v. 10268054 Canada Corp. et al. - Court File No.: CV-20-00652174-00CL

CAUTION: External e-mail.

A hearing was held in the above-noted matter via videoconference.
The counsel in attendance were those listed on the attached counsel slip.

Endorsement

The applicant seeks an order appointing BDO Canada Limited as receiver and manager for 10268054 Canada Corp. (the “Debtor”) and over all of its assets, undertakings and properties, including the real property at 135 Mandrake Street in Ajax, Ontario (the “Property”). The Property is in the process of being developed as a condominium building. The applicant also seeks approval of a sales process with respect to the sale of the Property.

The Debtor is in default on its loan from the applicant, which is secured by a mortgage against and the Property, a General Security Agreement, a Guarantee and an Assignment of Rights under Agreements of Purchase and Sale of condominium units. The applicant is concerned that some of the funds lent for the development of the Property may have been improperly applied to some other purpose. Pursuant to its lending agreement with the Debtor, in the event of a default, the applicant is entitled to appoint a receiver.

Shortly before the hearing, counsel for the Debtor advised the applicant that the Debtor had received an offer to purchase the Property. I agreed to stand the matter down to permit the applicant to review the offer.

When the hearing recommenced, the applicant advised that the offer is conditional, and even if the Property were sold to the offeror, the applicant would suffer a shortfall. Accordingly, the applicant asked that the order sought be granted, but its effective date deferred for one week to give the Debtor an opportunity to negotiate for a better offer or to obtain another offer. The Debtor consented to this process and asked that the effective time of the receivership order, if granted, be deferred until 12 noon on January 21, 2021. The applicant agreed to that timing.

The applicant submits that a court-appointed receiver is appropriate in this case to ensure that the interests of all creditors and stakeholders are considered. In addition to the applicant, there are other secured creditors with potentially competing interests. While construction has not started on the Property, some services have been put in place, which could have an impact on the sale of the Property. There are also outstanding agreements of purchase and sale for condominium units, and a concern about possible misappropriation by the Debtor of some of the borrowed funds. The applicant may, at some point, consider making a credit bid. These facts militate in favour of a court-supervised process. A court-appointed receiver would likely maximize the return on, and the preservation of, the Property. With court supervision, the receiver will likely be able to carry out its various duties and work more efficiently in what could be a multi-faceted receivership.

In my view, it is just and convenient to appoint a receiver in these circumstances; however the appointment should be deferred for one weeks' time to permit the Debtor the opportunity to refinance or find a suitable purchaser.

I have reviewed the proposed sales process set out in the pre-filing report of the proposed receiver and find it to be in order. It should be approved.

Order to go in the form of the draft signed by me and attached hereto. The Order is effective **January 21, 2021 at 12 noon**. It is not required that the Order be entered.



Dietrich J.
Superior Court of Justice (Toronto)
January 14, 2021

****Please note that Robins Appleby LLP is working remotely due to the COVID-19 pandemic. We continue to be available by email and by phone. Our secure electronic file management system enables us to be fully operational during this time.****

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