

CITATION: Duca FSCUL v. Ashcroft Homes -101 Richmond et. al., 2024 ONSC 6667

COURT FILE NO.: CV-24-95337

DATE: 2024 11 28

SUPERIOR COURT OF JUSTICE – ONTARIO

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

RE: DUCA FINANCIAL SERVICES CREDIT UNION LTD., Applicant

AND:

ASHCROFT HOMES - 101 RICHMOND ROAD INC., ASHCROFT HOMES - 108 RICHMOND ROAD INC., and ASHCROFT HOMES - 111 RICHMOND ROAD INC., Respondents

BEFORE: C. MacLeod RSJ

COUNSEL: Fraser Mackinnon Blair & John Salmas for the Reciever (BDO)

Timothy Dunn & Stephen Goudreau, for the Applicant

Raymond Murray & Sarah DelVillano, for the Respondents

HEARD: November 5, 2024

ENDORSEMENT

[1] On May 16, 2024 I granted an order appointing a Receiver over the business and enterprise of the Respondents. (see 2024 ONSC 2830). That order provided a grace period during which the Respondent was to continue its efforts to refinance. Those efforts were unsuccessful, and the Receivership went into effect.

[2] On September 3rd, 2024 the Receiver obtained an Amended and Restated Order and an Order approving a sales process from Justice Corthorn. Both of those orders were on consent of Ashcroft.

[3] Subsequently, Ashcroft was able to obtain a new financing commitment in the approximate amount of \$7.5 million and on that basis the Receiver agreed to suspend the sales process. Unfortunately, the Receiver is now of the view that this amount will not be sufficient to permit it to recommend a discharge. The parties disagree. Ashcroft therefore moves to discharge the Receiver and set aside the order. The Receiver moves for Advice & Directions.

[4] The net amount available pursuant to the refinancing is more than the balance owing to DUCA and it should also be sufficient to pay out the priority claims owing for property taxes and HST or other tax liability to CRA. The total estimated tax liabilities are roughly \$245,000. Although municipal taxes may be ascertained, however, the federal taxes owing are estimates because at this point no statement has been obtained from CRA.

[5] DUCA cannot release its security until it is satisfied that all priority claims have been satisfied. Otherwise DUCA might have residual liability.

[6] In addition to the secured claim of DUCA and the priority claims, the Receiver is concerned about the roughly \$470,000 in pre-receivership debt owing to unsecured creditors. While none of those creditors appear to have commenced claims or to have appeared in this proceeding, the Receiver as a court appointed receiver has an obligation to all creditors. The Receiver submits that there must be at least a credible plan to pay the unsecured creditors and at this point there is no clear plan.

[7] A further concern is the intercompany debt. Ordinarily Ashcroft might simply deal with that debt internally but currently there are other Ashcroft entities in receivership as well. It would be necessary to obtain releases or otherwise defer the payment of those intercompany debts. At this stage, the court does not have all the details.

[8] Finally, there is the question of the fees and expenses of the Receiver. These are a matter of some dispute. The Receiver concedes that it cannot pay itself until the fees and costs of the receivership are approved by the court. Ashcroft is free to dispute those expenses, call for an accounting or otherwise seek relief from the court and the Receiver does not challenge Ashcroft's ability to do so. The Receiver, however, submits that there must be a sufficient reserve retained to ensure these amounts can be paid if approved.

[9] Given the indulgences already provided to Ashcroft, the grace period originally ordered and the uncertainty surrounding the total amount of the debts, it would not be prudent to discharge the Receiver only to have Ashcroft face enforcement by another creditor or commit an act of bankruptcy.

[10] I am not satisfied on the evidence before me that the Receivership should be terminated and the Receiver be discharged. I am also not satisfied that if Ashcroft is allowed to proceed with its own sales process, that the process would be less expensive or more efficient than the plan of sale that was approved by the court on consent of Ashcroft.

[11] In summary, the motion to discharge the Receiver is dismissed. The Receiver may proceed with the proposed sales process under the existing orders.

Mr. Justice C. MacLeod

November 28, 2024