

HSBC BANK CANADA
Applicant

-and-

MAHVASH LECHCIER-KIMEL

Respondent

Jan 19-15 Court File No. CV-13-9989-00CL

Feb 3, 2015

G. Azoff - for receiver

M. McQuade - for Dr. Goldfinger, - 3rd witness

J. Schatz - for Concourse Auctions

T. Duncan - for HSBC

Receiver's motion to approve activities in the eighth report - specifically an increase in the borrowing limit from \$1 million to \$2 million and approval of an auction agreement with Concourse.

Mr. McQuade advises that his client is agreeable to the revised loan commitment dated Jan 21, 2015 which increases the loan to \$2 million (effectively an additional million) available in a first tranche of \$500,000 and thereafter in \$100,000 increments, to be drawn down by the Receiver as required. Dr. Goldfinger's agreement to increase borrowing is without prejudice to him being able to raise what he considers to have been inappropriate handling of payment of taxes by the Receiver during the (see approval).

Dr. Goldfinger appears the agreement with Concourse. He says that there is no evidence, it is the best deal; that the fee is inappropriate in circumstances where the property is sold before auction; and the reserve price of ~~100,000~~ (over)

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
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MOTION RECORD

(MOTION RETURNABLE JANUARY 19, 2015)

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Zeifman Partners Inc.

The Receiver advises that the agreement with Concourse was negotiated. Concourse knows the property; did a good job with the first auction and has waived its Engagement fee. Further the terms of payment (10%) are standard in the industry and are shared with the agents involved. I am satisfied the agreement is fair and should be signed. While the fee could end up being owed for little work, that is a possibility in the real estate market. The likelihood, however, given the length of time this property has been on the market, is that Concourse will have to expend significant effort to sell the property.

I have blanked out the ~~Agreed~~ proposed reserve price in the agreement because of its sensitivity to the process. The reserve was approved by Brown, J. on the first go round. When the sale fell through, the Receiver has continued to market the property without success. There is no evidence before me the market has changed since the last auction. Nor do I think the sale price, plus buyers premium, from the last auction is the appropriate measure.

While I agree the Receiver should be including Dr. Goldfinger in discussions about the property given his position as a secured lender, I am satisfied he has sufficient information about the steps the Receiver has taken in satisfying itself concerning the Concourse Agreement. I do not think a further adjournment is necessary.

The Auction Agreement with Concourse is therefore approved. Due to the sensitivity of its information, it will be sealed until the completion of a sale of the property or further order of the Court. Order signed by me.


R. Patrick J.