

Campbell, Amanda

From: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Sent: Thursday, June 24, 2021 3:48 PM
To: Wilson, Sara-Ann; Kraft, Kenneth; Allan Rutman; 'SN@friedmans.ca'; 'sgraff@airdberlis.com'; 'wf@friedmans.ca'; 'DK@friedmans.ca'
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: AVO Motion: Marchant, as Agent v. 2407553 Ontario Inc., et al. (CV-18-00604717-00CL & CV-18-00604725-00CL & CV-18-00604721-00CL)
Attachments: CV-00604717-00CL_Approval and Vesting Order (240 _ Bridge Street) - June 2021 (002).pdf; CV-00604717-00CL_Approval and Vesting Order (240 _ 4551 Zimmerman) - June 2021 (002).pdf; CV-18-00604725-00CL_Approval and Vesting Order (River Road) - June 2021 (004).pdf; CV-18-00604721-00CL_Approval and Vesting Order (Zimmerman) - June 2021 (002).pdf; CV-18-00604717-00CL_Approval and Vesting Order (240 _ 4299 Queen St) - June 2021 (002).pdf; Counsel Slip (Marchant) - June 24 2021 (003).pdf; CV-18-00604717-00CL_Administrative Order (240) - June 2021 (002).pdf; CV-18-00604725-00CL_Administrative Order (River Road) - June 2021 (002).pdf; CV-18-00604721-00CL_Administrative Order(Zimmerman) - June 2021 (002).pdf

[WARNING: EXTERNAL SENDER]

Appearances:

See attached counsel slip

Endorsement:

Approval and Vesting Orders

The Receiver seeks orders approving and authorizing sale transactions for five properties and vesting in the purchaser the right, title and interest in and to the purchased assets described in the purchase agreements. The Respondents and Mr. Kepinski, whose counsel appeared on this motion, consents. No one opposed. I am satisfied that the requested orders should be made. Orders to issue in forms of attached orders signed by me.

Administrative Orders

The Receiver also seeks orders in each of the three proceedings (i) approving the receiver's interim statement of receipts and disbursements from October 14, 2020 to June 14, 2021, (ii) approving the fees and disbursements of the Receiver and its counsel for the period from December 1, 2020 to May 31, 2021, and (iii) authorizing the redaction of the Confidential Appendices from the filed version of the Second Report and sealing the Confidential Appendices until closing of the sale transactions in respect of the real properties.

The Respondents object to approval of the fees and disbursements of the Receiver's counsel on two grounds. First, the Respondents note that the Receiver seeks costs on a partial indemnity scale of a motion I heard and decided and the Receiver agreed on a motion to the Court of Appeal for leave to appeal my decision that no costs were sought. They contend that the decisions as to costs in these proceedings limit the amount of costs which the Receiver is entitled to recover from the Respondents and that the Receiver is not permitted to be reimbursed for fees and disbursements from the estates of the debtors that were not awarded as costs on the two motions. Second, the Respondents submit that the amount claimed for costs is excessive.

On this motion, the Receiver is not seeking costs under s. 131 of the *Courts of Justice Act* as costs of and incidental to a proceeding that are in the discretion of the Court. Under the appointment orders dated August 6, 2020, the Court ordered that the Receiver and counsel to the Receiver shall be paid reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court. Under each order, the Receiver and counsel to the Receiver were granted a charge on the property as security for such fees and disbursements. The motion before me is for approval of the Receiver's fees and disbursements and those of its counsel. Approval of fees and disbursements and recovery of reasonable fees and disbursements is provided for by the appointment orders and such approval is not precluded by the positions taken by the Receiver in respect of costs of the two motions under s. 131 of the *Courts of Justice Act*. To the extent that a receiver recovers costs of a proceeding under the CJA from someone other than the debtor, this recovery accrues to the benefit of the estate in receivership.

The Receiver's counsel seeks approval of its fees and disbursements as more particularly described in the Affidavit of Kenneth Kraft affirmed June 14, 2021 and appended as an appendix to the Receiver's Second Report. In this affidavit, Mr. Kraft explains that the fees and disbursements for each application are accounted for separately and that these fees and disbursements are summarized in the invoices rendered to the Receiver. He states that the invoices contain a fair and accurate description of the services provided, the disbursements incurred and the amounts charged by legal counsel. Mr. Kraft appends as an exhibit to his affidavit a schedule summarizing the invoices, the total billable hours charged, the total fees charged and the average hourly rate charged. He appends a schedule summarizing the respective years of call and standard billing rates of each of the lawyers who acted for the Receiver.

From my review of the invoices, it is clear that a considerable amount of time was spent responding to the concerns raised by the debtors and their principals in respect to the proposed sale process and, specifically, the proposed listing prices for the properties. There were several appearances before me and a contested motion for approval of the sales process including the listing prices. Affidavit evidence was filed including appraisal evidence. The Receiver prepared and submitted reports to address these issues. Written materials were filed to assist the Court. A leave to appeal motion was brought.

The invoices include detailed descriptions of the services rendered and the time spent. The Respondents submit that the amounts claimed are too high. However, I was not directed to any particular entries that the Respondents contend involved services that were not reasonably necessary or where the time spent exceeded what would be reasonable for the described activities of counsel. The hourly rates of the lawyers involved are their standard rates. I am satisfied that fees and disbursements shown in the invoices of legal counsel are reasonable and should be approved.

I am satisfied that the requested administrative orders should be made. Orders to issue in forms of attached orders signed by me.



Cavanagh J.

-----Original Appointment-----

From: Wilson, Sara-Ann <sara.wilson@dentons.com>

Sent: June 24, 2021 10:27 AM

To: Wilson, Sara-Ann; Cavanagh, Justice Peter (SCJ); kenneth.kraft@dentons.com; Allan Rutman; 'SN@friedmans.ca';

'sgraff@airdberlis.com'; 'wf@friedmans.ca'; 'DK@friedmans.ca'

Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List

Subject: AVO Motion: Marchant, as Agent v. 2407553 Ontario Inc., et al. (CV-18-00604717-00CL & CV-18-00604725-00CL & CV-18-00604721-00CL)

When: June 24, 2021 1:00 PM-1:20 PM (UTC-05:00) Eastern Time (US & Canada).

Where: <https://dentons.zoom.us/j/95449837753?pwd=VExqTVQ1QmNTYnVUQitxY2xVWmpadz09>

Sara-Ann Wilson is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

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Meeting ID: 954 4983 7753

Passcode: 203702

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MERCHANT REALTY PARTNERS INC., as agent

Applicant

- and -

**2407553 ONTARIO INC., 2384648 ONTARIO INC., 2384646 ONTARIO INC., 24000196 ONTARIO INC.
and 2396139 ONTARIO INC.**

Respondents

Court File No. CV-18-00604725-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MERCHANT REALTY PARTNERS INC., as agent

Applicant

- and -

4267 RIVER ROAD LP and 4267 RIVER ROAD GP INC.

Respondents

Court File No.: CV-18-00604721-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

MERCHANT REALTY PARTNERS INC., as agent

BETWEEN:

Applicant

- and -

4544 ZIMMERMAN AVENUE LP and 4544 ZIMMERMAN AVENUE GP INC.

Respondents

**COUNSEL SLIP
June 24, 2021**

Sara-Ann Wilson, Dentons Canada LLP, for Zeifman Partners Inc. (the Receiver)

W. Friedman & Steven Nadler, Friedmans Law Professional Corporation, for the Respondents and Mr. Andrzej Kepinski (Guarantor)

Allan Rutman, Zeifman Partners Inc. (the Receiver)

Daniel Kumer, Friedmans Law Professional Corporation, for the Purchasers

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