



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-22-00674717-00CL  
related file: CV-21-00668821-00CL

DATE: JANUARY 23, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: LEGACY LIFESTYLES DESTIN LP et al. v.  
LEGACY LIFESTYLES DESTIN PROPERTY LLC et al.

BEFORE: JUSTICE STEELE

**PARTICIPANT INFORMATION**

**For Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
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**For Other:**

Name of Person Appearing	Name of Party	Contact Info
Jason Moore	Counsel for the Applicants, Legacy Lifestyles Destin LP et al. on CV-22-00674717-00CL and counsel for the Defendants, Gregory Marchant et al. on CV-21-00668821-00CL	jmoore@wagnersidlofsky.com
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Fred Tayar	Counsel for Hillmount Capital Inc.	fred@fredtayar.com
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**ENDORSEMENT OF JUSTICE STEELE:**

[1] The Receiver brings a motion seeking Court approval of the sale of the Destin Property (located at 401 Beach Drive, Destin, Florida), increasing the Receiver's borrowing capacity, and certain ancillary relief.

[2] No one opposed the relief sought on this motion.

*Should the Court approve the sale of the Destin Property?*

[3] Further to the sales process that was approved by Order, dated May 23, 2023, the Receiver engaged CBRE to market and list certain real properties for sale, including the Destin Property.

[4] The Receiver has entered into an agreement for the sale of the Destin Property to The School Board of Okaloosa County, Florida. The Receiver seeks court approval of the sale.

[5] The marketing process in respect of the Destin Property included marketing emails being sent by CBRE to their list of over 1,241 contacts weekly starting mid-July, including to over 500 brokers. The property was listed on MLS and a comprehensive data room was established. Twelve parties executed the confidentiality agreement to access the data room. Three offers were received for the Destin Property.

[6] The Receiver advised the Court that if this Court approves the Destin Purchase Agreement and the transaction, the Receiver intends to seek approval from the U.S. Court.

[7] The Court of Appeal in *Royal Bank of Canada v. Soundair Corporation*, 1991 CanLII 2727 (Ont. C.A.) set out the criteria the court generally applies when considering the approval of a sale:

- a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- b. Whether the interests of all parties have been considered;
- c. The efficacy and integrity of the process by which offers are obtained; and
- d. Whether there has been unfairness in the workout of the process.

[8] The Receiver notes the following in respect of the *Soundair* principles:

- a. With CBRE's assistance, the Receiver has made sufficient efforts to get the best price for the property. The Destin Property was widely marketed for over 11 weeks. Marketing efforts included direct outreach by CBRE to its numerous contacts as well as listing on MLS;

- b. The Receiver is of the view that the transaction is in the interests of the debtors and the investors for several reasons, including the Receiver's view that the consideration in the agreement is the highest and best offer that could be obtained for the Destin Property, and the support of the transaction by Hillmount;
- c. The sale process was developed in consultation with CBRE and involved a robust marketing process over 11 weeks. All prospective purchasers had access to the same information in the confidential data room. There were three rounds of offers.
- d. The Receiver, with CBRE's assistance, undertook the sale process in good faith and in a fair and transparent manner.

[9] The Receiver recommends that the Court authorize the transaction. Based on the record before me, the marketing process was fair and transparent. There is no reason to interfere with the Receiver's recommendation.

[10] The Orders sought in respect of the approval of the transactions and vesting of purchased assets are similar in all material respects to the Commercial List Model Order. The most notable difference is the insertion of language authorizing the Receiver to attend at Court in the United States for authorization of the transaction and inclusion of certain provisions requested by US real estate counsel to ensure that the Receiver has the authorizations required to execute the necessary documents.

[11] The sale transaction is approved.

*Should the Court approve the temporary sealing order sought?*

[12] The Receiver seeks an order sealing (i) the summary of offers for the Destin Property; (ii) the summary of appraised values and realtor opinions of value of the Destin Property; and (iii) the unredacted purchase and sale agreement, dated October 9, 2023.

[13] The Receiver's request is that the sealing order be time limited pending the closing of the transaction or further order of the Court. The information is commercially sensitive and could prejudice the sale of the properties if the contemplated transactions do not close.

[14] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.

[15] The requested partial sealing order is limited in scope (only the documents noted above) and in time (until each transaction is completed or further Court Order). The proposed partial sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative effects. Importantly, the sealing order will preserve the integrity of the sale process. This greatly outweighs any negative effect that may result from temporarily restricting public access to a limited amount of information. Further, granting the requested order is consistent with the Court's practice of granting limited partial sealing orders in conjunction with an approval and vesting order.

[16] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25.

[17] The Receiver is directed to provide the sealed confidential exhibit to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed orders (with the relevant provisions highlighted) so that the confidential exhibits can be physically sealed.

*Approval of fees and disbursements of the Liquidator and its counsel*

[18] In determining whether a Court officer's fees are fair and reasonable, the Court has considered the following non-exhaustive list of factors:

- a. The nature, extent and value of the assets handled;
- b. The complications and difficulties encountered;
- c. The degree of assistance provided by the company, its officers or employees;
- d. The time spent;
- e. The receiver's (or officer's) knowledge, experience and skill;
- f. The diligence and thoroughness displayed;
- g. The responsibilities assumed;
- h. The results of the receiver's (or officer's) efforts; and
- i. The cost of comparable services when performed in a prudent and economical manner:

*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at para. 33

[19] Fee affidavits were filed. I am satisfied that the fees and disbursements are fair and reasonable in the circumstances.

*Increase to Borrowing*

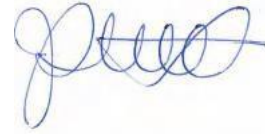
[20] The Receiver's current borrowing capacity is US\$4,231,845.

[21] To fund ongoing carrying costs and receivership expenses while the sale process continues in respect of other properties, Hillmount has agreed to provide \$150,000 additional availability on each of the Fort Myers Property and the Longleaf Property.

[22] The Receiver states that the additional funding is needed to pay property taxes, ongoing monthly expenses, carrying costs and professional fees.

[23] I am satisfied that the increase to the current borrowing capacity by US\$300,000 should be approved.

[24] Orders to go in the forms signed by me today.

A handwritten signature in blue ink, appearing to be "J. H. H.", is located to the right of the text in block [24].