



Court File No. CV-23-00001856-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE

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THURSDAY, THE 22<sup>nd</sup>  
DAY OF FEBRUARY, 2024

BETWEEN:

ELLA INVESTMENTS LIMITED

Applicant

– and –

VANDERCLAY DEVELOPMENT COMPANY LIMITED

Respondent

*Application Pursuant to Rule 66.01 of the Rules of Civil Procedure  
and sections 2 and 3 of the Partition Act, R.S.O. 1990, c.P.4*

**JUDGMENT**

**THIS APPLICATION**, made by the applicant pursuant to Rule 66.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and sections 2 and 3 of the *Partition Act*, R.S.O. 1990, c.P.4, was heard this day at 50 Eagle Street West, Newmarket, Ontario, via videoconference.

**ON READING** the notice of application issued April 20, 2023, the affidavit of Seymour Rubenzahl sworn March 30, 2023, the supplementary affidavit of Seymour Rubenzahl sworn November 13, 2023, the affidavit of Robert Martin sworn November 20, 2023, the

supplementary affidavit of Robert Martin sworn February 16, 2024, the second supplementary affidavit of Seymour Rubenzahl sworn February 19, 2024, together with the exhibits thereto, and the Consent of Zeifman Partners Inc. (“Zeifman”) dated November 30, 2023 to act as Court-appointed sales officer, filed, and on hearing the submissions of counsel for the applicant and the submissions of counsel for the respondent,

**Sale of Property**

1. **THIS COURT ORDERS THAT**, subject to the terms of this Judgment and further orders of the Court, the property municipally known as 18818 Woodbine Avenue, with PIN 03438-0544 (LT), and legally described as PT LTS 8, 9 & 10 CON 3 (EG); S/T A13845A; TOWN OF EAST GWILLIMBURY (the “**Property**”) shall be sold in the manner described in this Judgment, subject to approval of the Court.

**Appointment and Powers of Sales Officer**

2. **THIS COURT ORDERS THAT**, subject to paragraph 3 below, Zeifman be and hereby is appointed as an officer of this Court to serve as the **Sales Officer**, with all necessary authority to conduct a sale of the Property in such a manner as the Sales Officer in its discretion may determine for the purpose of maximizing the benefit of the sale to the applicant and respondent (the “**parties**”). Nothing in this Judgment shall prevent the Sales Officer from considering offers to purchase from either of the parties, or anyone related to either of the parties.

3. **THIS COURT ORDERS THAT** the Sales Officer be and hereby is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Sales Officer is hereby expressly empowered and authorized to do any of the following where the Sales Officer considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Sales Officer's powers and duties, including without limitation those conferred by this Order;
- (c) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Sales Officer in its discretion may deem appropriate;
- (d) to sell, convey, transfer, lease or assign the Property with the approval of this Court in respect of any transaction;

- (e) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (f) to report to, meet with and discuss with the parties as the Sales Officer deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Sales Officer deems advisable;
- (g) to register a copy of this Order and any other Orders in respect of the Property against title to the Property; and
- (h) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Sales Officer takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the parties, and without interference from any other person.

**4. THIS COURT ORDERS THAT** the Sales Officer shall develop a written plan for the sale of the Property in an orderly fashion (the "**Plan of Sale**") which shall provide for the marketing for sale of the Property within 2 (two) months, with the intent of completing a sale within 6 (six) months, of the date of this Judgment, and provide the parties and the Court with the Plan of Sale.

5. **THIS COURT ORDERS THAT** the Sales Officer shall be at liberty to retain such professionals and obtain such reports as are necessary to draft and undertake the Plan of Sale.

6. **THIS COURT ORDERS THAT** the Sales Officer shall solicit marketing proposals from RDH Group | Royal LePage Commercial, Re/Max Experts, and two other real estate brokers of the Sales Officer's choosing. The marketing proposals should include marketing strategy, suggested listing price based on a work up of comparables and other factors, commission rates, etc. The Sales Officer will then select one broker based on its assessment of whose marketing proposal is best.

7. **THIS COURT ORDERS THAT** the parties shall participate to the extent reasonably requested by the Sales Officer in the sale of the Property and the parties and the Sales Officer shall be at liberty to consult one another on such matters relating to the sale as they see fit.

8. **THIS COURT ORDERS THAT** for the purpose of the matters set out in this Judgment, all communications to or from the Sales Officer, or to counsel for either of the parties, may be by way of email. All notices or documents that this Judgment requires to be given or delivered to either of the parties or the Sales Officer may be delivered to the lawyers for the party or the Sales Officer entitled to such notice.

9. **THIS COURT ORDERS THAT** the parties shall provide to the Sales Officer such appraisal or valuation information as relates to the Property that is or may come to be in their possession.

10. **THIS COURT ORDERS THAT** the Sales Officer is hereby directed and empowered to:

- a) seek, upon at least five (5) business days' notice to the parties, this Court's direction on such matters as the Sales Officer deems necessary;
- b) report to this Court as the Sales Officer deems appropriate or as this Court directs, in respect of such matters as may be relevant to the proceedings herein;  
and
- c) sign, on behalf of the parties, such documents as are necessary to carry out the powers that this Judgment assigns to the Sales Officer.

11. **THIS COURT ORDERS THAT** the Sales Officer shall provide the parties with at least five (5) business days' notice of the listing of the Property for sale and the price at which the Property shall be listed.

12. **THIS COURT ORDERS THAT** both parties shall be entitled to make offers and enter an agreement of purchase and sale with the Sales Officer for the Property.

13. **THIS COURT ORDERS THAT** upon the closing of the sale of the Property, the Sales Officer shall pay the net proceeds of sale into an interest-bearing account, pending further Order of the Court.

**Fees and Indemnity of Sales Officer**

14. **THIS COURT ORDERS THAT** the reasonable fees and expenses of the Sales Officer in connection with its duties and those of advisors and others whom it engages, including the Sales Officer's legal counsel, shall be paid out of the proceeds of sale of the Property, and the Sales Officer shall have a first charge on the net proceeds of sale after payment of any and all mortgages and other encumbrances in respect of and only to the extent of its account(s), subject to further order or direction of the Court. The fees for the Sales Officer, and its partners or employees, will be charged at each person's then-prevailing hourly rate.

15. **THIS COURT ORDERS THAT** the parties shall and do hereby indemnify the Sales Officer of and from all claims, liabilities and obligations of any nature whatsoever, including, without limitation, legal fees and disbursements, which may arise out of its performance of the terms of this Judgment and such further and other Orders as may be made in relation to the Plan of Sale, from and after the date hereof in the above-mentioned capacity, save and except such as may arise from wilful misconduct or gross negligence.

16. **THIS COURT ORDERS THAT** nothing herein contained shall vest in the Sales Officer the ownership of the property, assets or undertaking of the parties, nor shall it expose the

Sales Officer to any liability under the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Canada Environmental Protection Act*, the *Emergency Plans Act* (Ontario), the regulations thereunder, or any similar legislation. The Sales Officer shall be deemed not to be in possession of the Property under any environmental laws.

17. **THIS COURT ORDERS THAT** the Sales Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Sales Officer and its legal counsel are hereby referred to a judge of this Court. On such passing of accounts it shall be open to the parties or either of them to assess the accounts of the Sales Officer and/or of its legal counsel.

**No Proceedings Against the Sales Officer**

18. **THIS COURT ORDERS THAT** that no proceeding or enforcement process in any court or tribunal shall be commenced or continued against the Sales Officer except with the written consent of the Sales Officer or with leave of this Court.

**Costs**

19. **THIS COURT ORDERS THAT** the respondent pay to the applicant the sum of \$18,500 for the costs of this application. The costs fixed by and payable under this Judgment bear interest at the post-judgment interest rate of 7% per year from its date.



**No Requirement for Entry or Filing of this Judgment**

20. **THIS COURT ORDERS THAT** this Judgment is effective from the date it is made, and it is effective and enforceable without the need for entry or filing.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

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VANDERCLAY DEVELOPMENT COMPANY LIMITED

Respondent

ELLA INVESTMENTS LIMITED

Applicant

- and -

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Newmarket

**JUDGMENT**

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**Lawyers for the Applicant**