IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED and IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No: 13-10362-00-CL

Oct 16-14

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCI LIST

Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE October 16, 2014)

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, ON M5H 2Y2
James Klein LS#: 25014B
Tel: 416.366-9494
Fax: 416-366-9442

Lawyers for the Moving Parties

Medi Group Incorporated; 1865721 Ontario In Canadian Concrete Forming Limited; Cardell Floori Ltd.; E.D. Carpenters Limited; Foremont Drywall Ir et al carrying on business as Foremont Dryw: Contracting; Giancola Aluminum Contractors Inc GM Exteriors Inc.; Pave Plumbing & Heating Inc Pilbro III Inc.; and Solo Electric Ltd.

Oct 16/14

D. Preger
J. Klein) for M. Parties

F. Souza - for Moving Parties Argo Lumber and Newmar Window Manuf. - in companion motion

M. Poliak - for Silverstream Companies

A. Weinstock - for Jack Greenberg and the private lenders

I. Aversa - for the Monitor.

These are two motions to lift the stay granted as part of the order of Newbould J. dated December 17, 2013 to permit the moving parties to commence a breach of trust action against the Applicant companies, their officers and directors and the private mortgagees.

This CCAA proceeding was commenced to monetize the value of the Applicant's assets (10 residential lots) and to deal with claims. The lots have been almost all sold and a claims process has been commenced by the Monitor. The claims process includes resolution of the lien claims. The Moving Parties are lien claimants and are participating (over) in the CCAA approved claims process. In light of the fact that there may be a short fall in their recovery of the lien claims, they wish to bring actions asserting a trust claim under the Lien Act. They submit the court should lift the stay to allow their claims (2 actions) to be issued and served; the defendants to file statements of defence and parties to engage in full production of documents.

The companies, their officers/directors and the private mortgagees submit it would be too expensive and time consuming to have to respond and gather documents for production. They are not opposed, however, to lifting the stay to allow the actions to be commenced and served but otherwise ~~to stay~~ to remain in place ~~on the basis~~ for the purpose of stopping the limitation period from running. They further submit that the trust action is premature and should await a determination of the lien claims in the claim process in the CCAA proceeding. It is possible the lien claims may be fully satisfied in that proceeding eliminating the need for the trust action.

In my view, the balance of convenience favours lifting the stay to permit both trust actions to be issued and served. I am also of the view that the defendants in the actions should file statements of defence. Thereafter the stay should resume until further order of the court. The Moving Parties should be permitted to commence their actions to avoid any limitation issues. Apart from costs to prepare defences, I see no prejudice to the defendants. I do not consider such costs to be prohibitive.

The Moving Parties have elected to proceed in the lien claim process in the CCAA proceedings. That process is underway. In my view, they should be required to conclude that process before embarking on the trust actions. To ensure that documents relevant to the trust claims are preserved, the Applicants, their officers and directors and the private mortgagees are directed to retain and preserve all such documents.

Given the mixed result, there will be no order as to costs. The actions may be brought on the commercial list.

Pattillo J.