Further to my endorsement below dated March 18, 2021, this endorsement will address the Receiver's motion for directions and the respondent Jaimee Gdak's motion to remove any reference in the Receivership Order, including Schedule "A" thereto, to the real property municipally known as 250 Lions Court, in the City of Waterloo, Ontario ("Lions Court"). Both motions were heard on March 17, 2021.

<u>The Receiver's motion for directions</u>

The Receiver seeks an Order approving its Second Report and the Supplemental Report, and its activities described in the Reports. It also seeks approval of its Receipts and Disbursements as well as its fees and the fees of its counsel. I have reviewed the Reports and find that this relief should be granted. The Receipts and Disbursements appear to be appropriate and the fees appear to be fair and reasonable. This relief sought is unopposed.

The Receiver also seeks an Order: permitting the marketing and sale of the Trigger Real Property (as defined in the Second Report), which includes all real property, which, according to the Receiver's Report, was purchased using Trigger Wholesale, Inc. ("Trigger") funds; making a declaration that the use of Trigger funds to purchase Trigger Real Property was a transfer at undervalue within the meaning of the *Bankruptcy and Insolvency Act* (the *BIA*") and void as against the Receiver; and making a declaration that the respondents, as applicable, hold the Trigger Real Property as constructive trustee for the benefit of Trigger's creditors, among other relief related to the Trigger Real Property.

There was no opposition to this relief sought. Based on the evidentiary record before the court, I am not satisfied that there is sufficient evidence to determine whether the use of the Trigger funds to purchase the Trigger Real Property was a transfer at undervalue within the meaning of s. 96 of the *BIA*. If such a declaration is required, the determination would need to be made at a trial of this issue. The other relief should be granted.

The Receiver also seeks: an order that the Personal Property Assets (as defined in the Second Report) are owned by Trigger free of any claims of the other respondents, and that the respondents in possession of such Personal Property Assets deliver them forthwith to the Receiver; a declaration that the use of Trigger funds to purchase the Personal Property Assets is a transfer at undervalue within the meaning of the *BIA* and is void as against the Receiver, and if the Personal Property Assets have been disposed of, the respondents are directed to pay to the Receiver the difference between the value of the consideration received by Trigger and the value of the consideration given by Trigger in the use of the Trigger funds to purchase the Personal Property Assets; a declaration that the respondents, as applicable, hold the Personal Property Assets as constructive trustee for the benefit of Trigger's creditors; and an order permitting the Receiver to sell the Personal Property Assets in accordance with the Receivership Order, among other relief related to the Personal Property Assets.

There was no opposition to this relief sought. Based on the evidentiary record before the court, I am not satisfied that there is sufficient evidence to determine whether the use of the Trigger funds to purchase the Personal Property Assets was a transfer at undervalue within the meaning of s. 96 of the *BIA*. If such a declaration is required, the determination would need to be made at a trial of this issue. The other relief should be granted; however, it is acknowledged and agreed between the Receiver and Jaimee Gdak that she shall be given 60 days from the date of this endorsement to deliver to the Receiver the Range Rover, registered in her name, which forms part of the Personal Property Assets.

Lastly, the Receiver seeks an order permitting it to market and sell the Real Property (as defined in the Second Report) free and clear of any prior agreements to purchase the Real Property as well as any license agreements or rental agreements, which, if any, shall be nullified on the closing of the transaction in respect of the Real Property. The Real Property includes Lions Court. The relief sought should be granted except in respect of Lions Court.

Lions Court

Lions Court is the matrimonial home of the respondents Mark Gdak and Jaimee Gdak. The Receiver is not seeking an order that Lions Court is owned by Trigger. According to the record, it was purchased by, and registered in the names of, the respondents Mark Gdak and Jaimee Gdak, as joint tenants, in 2005. However, on July 2, 2019 Mark Gdak transferred his interest in Lions Court to Jaimee Gdak for natural love and affection. There is evidence to suggest that this transfer could be set aside as a fraudulent conveyance under the *Fraudulent Conveyances Act*.

None of the parties asserts that Lions Court was purchased with Trigger funds. However, the Receiver asserts that some or all of $136,320 of Trigger funds was used to discharge a mortgage on Lions Court that secured a loan made to Mark Gdak and Jaimee Gdak by Pedro Cuesta to finance the business of Trigger.

The Bank of Montreal has a mortgage on Lions Court and there is a construction lien registered on the title as well. The Receiver is investigating the lien. According to the Receiver's Report, there is likely to be equity in Lions Court. Initially, the Receiver agreed not to market Lions Court for sale until the earlier of March 17, 2021 and a breakdown in the negotiations between Mark and Jaimee Gdak and the Receiver. Those negotiations have ceased and the Receiver now seeks an order permitting it to market and list Lions Court. Pursuant to the Receivership Order, the Receiver, would still need to return to court for approval to sell Lions Court.

Jaimee Gdak opposes the listing and sale of Lions Court and moves to vary the Receivership Order with the result that Lions Court would be removed from Schedule "A" and the Receiver would not have any authority to deal with it. Lions Court would nonetheless continue to be subject to the *Mareva* injunction. Mark Gdak did not file any material in support of Jaimee Gdak's motion but his counsel confirmed that Mark Gdak supports the motion.

The Receiver argues that Jaimee Gdak is making a late attempt to appeal the Receivership Order without the support of any statutory authority or rule of *Civil Procedure*. Specifically, she has not shown any error, fraud or new evidence with respect to the Receivership Order.

While Jaimee Gdak did not have legal counsel at the time the Receivership Order was made, she was served in that proceeding, and she did have legal representation soon after that Order was made. She did not take any steps to appeal or vary the Receivership Order at that time. Mark Gdak was represented at that time and he did not oppose the relief sought in the Receivership Order.

Jaimee Gdak asserts that the Lions Court property is hers and has nothing to do with Trigger. She denies any involvement with the mortgage from Pedro Cuesta. Further, she asserts that to permit the Receiver to sell Lions Court at this juncture would create real hardship for her and her minor children, one of whom has medical issues. She is a stay-at-home mother with no job.

I find that Jaimee Gdak has not provided the court with sufficient evidence or authority that would permit the variation of the Receivership Order that she requests. Accordingly, her motion is dismissed.

The extent of Jaimee Gdak's exposure to liability in this matter has not been determined. The principle creditor, Clearflow Commercial Finance Corp., asserts that she is a guarantor of the indebtedness owed by Trigger to it. That issue has yet not been determined. If it is determined that Jaimee Gdak is a guarantor, it is likely that Lions Court will need to be sold. It has also not yet been determined whether Mark Gdak's transfer of his interest in Lions Court was a fraudulent transfer that could be set aside. If that interest is set aside, it is, again, likely that Lions Gate will need to be sold. It appears that there is a dispute with respect to whether Trigger Funds were used to discharge some or all of the Pedro Cuesta mortgage. That dispute will need to be resolved as well. Accordingly, I decline to authorize the Receiver to list and market Lions Court at this time. This decision is without prejudice to the Receiver's right to renew its request to market and list Lions Court following the determination of one or more of these issues.

The Receiver seeks a sealing order with respect to Confidential Appendices to the Reports. I am satisfied that the *Sierra Club* test has been met for these commercially-sensitive materials. **On the resumption of regular court operations, it will be the responsibility of counsel for the Receiver to ensure that the subject materials are properly identified and protected under seal in the court file.**

Order giving directions to go in the form of the draft signed by me and attached hereto. The Order is effective as of today's date and it does not need to be entered.

If any party is seeking costs in respect of these motions, the parties are strongly encouraged to agree on the matter of costs. If they cannot agree, they may arrange a 9:30 am chambers appointment to schedule a hearing to deal with the matter of costs.

Dietrich J.

Dietrich J.
Superior Court of Justice (Toronto)
March 31, 2021