SUPERIOR COURT OF JUSTICE

Court File No. CV-23-00001092-0000 (LONDON)

B E T W E E N

FARM CREDIT CANADA

Plaintiff

and

SIF AMBER (3.5) PROJECTS LP and SIF AMBER (3.5) PROJECTS GP INC.

Defendants

Appearances:

H. Fisher and C. Prophet, lawyers for the Court-appointed Receiver, Grant Thornton Limited

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[1] The Court-appointed receiver, Grant Thornton Limited (the "Receiver") moves for:

a. an order called the Approval and Vesting Order:

   i. approving the sale transaction contemplated by the asset purchase agreement dated March 5, 2024 between the Receiver and Sirius Web Labs Inc. for the sale of the Defendants' property; and

   ii. sealing confidential documents relating to the said sale transaction until after it has been completed;

b. an order called the Ancillary Relief and Discharge Order:

   i. approving the First Report of the Receiver dated April 10, 2024 and the activities of the Receiver;

   ii. authorizing the Receiver to make an assignment into bankruptcy in respect of the Defendants and authorizing Grant Thornton Limited to act as trustee in bankruptcy in respect thereto;

iii. approving the proposed distribution to Farm Credit Canada less receivership costs, fees, and priority payables, up to the amount of the indebtedness owed to Farm Credit Canada;

iv. approving the Receiver's interim statement of receipts and disbursements dated March 27, 2024;

v. approving the fees and disbursements of the Receiver and its independent legal counsel, including final fees not yet determined;

vi. discharging the Receiver upon the Receiver filing a certificate confirming it has completed all outstanding matters referenced as "Remaining Matters" in the Receiver's First Report; and

vii. releasing the Receiver upon filing the filing of the said certificate.

[2] In support of its motion, the Receiver has filed a record containing, among other things, the First Report of the Receiver dated April 10, 2024 setting out the Receiver's activities since the initial receivership order was made on 18 September 2023, including, in particular, the steps taken by the Receiver to market and sell the Defendants' assets, and the Affidavit of Daniel Wootton, senior vice-president of the Receiver, which addresses the interim and anticipated future fees of the Receiver.

[3] On the consent of Farm Credit Canada, who appears to hold valid and enforceable security against the Defendants' property, and in the absence of any objection by Canada Revenue Agency which does not appear though duly served, the Approval and Vesting Order and the Ancillary Relief and Discharge Order will issue in the form filed and signed by me today.

[4] Certain aspects of these orders warrant specific mention.

[5] First, based on the information provided in the Receiver's First Report, I am satisfied that the proposed transaction meets the requirements for approval articulated by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp*., 4 O.R. (3d) 1 at para. 16.

[6] Second, I find that it is appropriate to make a limited sealing order in relation to the three confidential appendices attached to the First Report of the Receiver in light of the test articulated by the Supreme Court in *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38. The specific terms of the proposed asset sale to Sirius Web Labs Inc. should remain confidential until the transaction is closed for the protection of the Defendants in maximizing the proceeds of sale, and to protect the integrity of the competitive bidding process should the transaction fail to close for any reason. Given that the transaction is expected to close on or before April 30, 2024, I find that a limited sealing order is proportionate and necessary to protect the integrity of the receivership and bankruptcy process.

[7] Third, I authorize the Receiver to assign any of the Defendants into bankruptcy for the specific purpose of reversing the statutory priority of the $64,000.00 liability owing to Canada Revenue Agency. In doing so, I rely on the Court of Appeal decision in *Re Ivaco Inc*. 2006 CanLII 34551 (ON CA), [2006] O.J. No. 4152 (C.A.). While the ultimate cost-benefit of bankrupting the Defendants or either of them is open to some question given the relative fee expense involved, I decline to exercise my discretion otherwise than in accordance with the request of the Receiver in the absence of Canada Revenue Agency taking any interest in the matter.

[8] Fourth, I find that the fees and disbursements of the Receiver and its counsel are fair and reasonable. I have reviewed the fee affidavit of Dan Wootton. The assets involved in this receivership are complex and required expertise and significant efforts to solicit interest and engaged in a fair and competitive bidding process. The interim accounts, while substantial, raise no concerns for the Court.

[9] Fifth and finally, I find it reasonable and appropriate in the circumstances to approve the ancillary relief and discharge order permitting the discharge of the Receiver upon filing the certificate of completion as contemplated by the draft order. In other circumstances, I might pause before granting the order because the automatic discharge will result in the Receiver's discharge without a final report on its activities and without review of its final fees and disbursements. However, in circumstances where there will be a substantial shortfall on recovery, where Farm Credit Canada consents to the automatic discharge, and the proposed order does not discharge the receiver for intentional misconduct, I am satisfied that the discharge and release provisions are an efficient and cost effective means by which to terminate the proceedings.

[10] I am indebted to counsel for providing the draft orders and for their focused and very helpful submissions on various aspects of the orders sought.

April 19, 2024

M.A. Cook J.

Justice M.A. Cook