Court File No. CV-18-00608086-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondents

FACTUM OF GRANT THORNTON LIMITED IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF MONEY GATE MORTGAGE INVESTMENT CORPORATION

(Motion Returnable January 17, 2023)

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TO: SERVICE LIST

SERVICE LIST
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FACTUM

PART I – NATURE OF THE MOTION

1. This is a motion by Grant Thornton Limited ("**GTL**"), in its capacity as Court-appointed receiver and manager (in such capacities, the "**Receiver**") over the property, assets, and undertakings of Money Gate Mortgage Investment Corporation ("**MGMIC**"), for an order approving the Minutes of Settlement dated September 22, 2022 between Troy Edward Thomas Wilson ("**Wilson**") and the Receiver, as amended by the Amendment to the Minutes of Settlement dated November 18, 2022, and Second Amendment to Minutes of Settlement dated December 22, 2022 (the "**Wilson Settlement**").

PART II – FACTS

Background

2. MGMIC carried on business as a mortgage investment corporation. Morteza (Ben) Katebian and Payam Katebian (collectively, the "**Katebians**") are the sole directors and officers of MGMIC.[1]

3. On November 6, 2018, on an application of the Ontario Securities Commission (the "**OSC**") pursuant to sections 126 and 129 of the *Securities Act*, GTL was appointed as Receiver over the property, assets and undertakings of MGMIC.[2]

4. The OSC commenced a separate proceeding against MGMIC and the Katebians. On April 1, 2021, the OSC issued a decision in a separate proceeding commenced by the OSC against the Katebians and MGMIC wherein it found, among other things, that the Katebians perpetrated fraud on MGMIC's investors.[3]

MGMIC's Assets

5. MGMIC's primary asset was its portfolio of loans made to borrowers secured by mortgages. Between August 2014 and April 2017, MGMIC raised approximately $11.0 million from approximately 155 investors.[4]

6. At the time of the Receiver's appointment, MGMIC's portfolio consisted of nine mortgages registered against seven properties located across the Province of Ontario (the "**MGMIC Mortgages**" and each an "**MGMIC Mortgage**").[5]

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[1] Receiver's Sixth Report to the Court dated November 22, 2022 (the "**Sixth Report**") at paras 7 and 8, Tab 2 of the Receiver's Motion Record.

[2] Order of the Honourable Mr. Justice Hainey dated Tuesday November 6, 2018 (Court File No. 18-00608086-00CL).

[3] *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40.

[4] Sixth Report at para. 7.

[5] Sixth Report at para. 9

7. In its past reports with the Court, the Receiver set out a detailed update on the status of the Receiver's enforcement and recovery efforts with respect to each MGMIC Mortgage. As at the date of its Sixth Report, the Receiver has completed its recovery efforts with respect to six out of the nine MGMIC Mortgages.[6]

8. As at the date of the Sixth Report, the following three MGMIC Mortgages remain outstanding against two properties[7]:

Property	Municipal Address	First Mortgage	Second Mortgage
"**Timiskaming Property**"	1107 Lakeshore Rd S. Timiskaming Shores	$ 435,000	$ 3,475,000
"**Timmins Property**"	5355 Highway 101 W. Timmins	2,372,500	-

9. As described in greater detail in the Receiver's reports to the Court, the Timiskaming Property and the Timmins Property each have substantial environmental issues. The Receiver obtained appraisals of each of these properties, which have been filed with this Court on confidential basis in April 2020 as confidential appendices to the Receiver's Fourth Report to the Court dated April 30, 2020. Based on the valuations of these properties and their environmental issues, the Receiver has advised the Court and the MGMIC investors that it decided not to take any enforcement steps with respect to these mortgages.[8]

10. In July 2020, the Receiver was advised by Payam that he had a party interested in taking an assignment of MGMIC's mortgage against the Timmins Property. Although the

[6] Sixth Report at paras. 10-12.
[7] Sixth Report at para. 12.
[8] Sixth Report at paras. 13-30.

proposed purchase price for the assignment was nominal to the value of the mortgage, the Receiver engaged with the proposed purchaser and provided a copy of an assignment agreement. The assignment was never finalized. No other interested parties have been put forward by Payam since July 2020.[9]

Action against Wilson and Minutes of Settlement

11. Canadian Land Corporation ("**CLC**") is the registered owner of the Timmins Property. At all relevant times, Wilson was the director of CLC. The Receiver understands that CLC is owned director or indirectly by Arash Misaghi and/or his wife, who is Wilson's associate.[10]
12. Following its appointment, the Receiver obtained copies of the loan and security documents in connection with MGMIC's mortgage against the Timmins Property, all of which appear to be signed by Wilson in his capacity as director of CLC.[11]
13. On October 23, 2020, the Receiver commenced an action against Wilson for the enforcement of his guarantee (the "**Action**"). Wilson defended the Receiver's actions and alleged that the loan and security documents relied on by the Receiver are products of forgery by the Katebians. Similar allegations of fraud have been leveled by Wilson and his associates against the Katebians in other proceedings before this Court.[12]
14. Wilson also commenced a third-party claim against the Katebians for contribution and indemnity.[13]

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[9] Supplement to the Sixth Report dated January 10, 2023 at paras. 12 to 16.
[10] Sixth Report at para. 25.
[11] Sixth Report at para. 33.
[12] Sixth Report at paras. 34 and 35.
[13] Sixth Report at para. 36.

15. Counsel for the Receiver and Wilson engaged in lengthy settlement negotiations which culminated in the Wilson Settlement. The terms of the Wilson Settlement are as follows:

    a. Wilson shall pay to the Receiver a one-time lump sum payment of One Hundred and Seventy-Five Thousand Dollars ($175,000.00) by January 31, 2023 (the "**Settlement Amount**");

    b. Following the receipt of the payment, the Receiver will assign to Wilson, or as otherwise directed, the Timmins Mortgage and the mortgages in favour of MGMIC registered against the Timiskaming Property;

    c. Wilson provided to the Receiver an executed Consent to Judgment for the full amount claimed by the Receiver in the Action, which can be utilized by the Receiver if payment of the settlement amount is not received by January 31, 2023;

    d. If payment is received, Wilson by January 31, 2023, the Receiver will obtain an order dismissing the Action against Wilson on a without cost basis. Once the Receiver obtained an order dismissing the Action, Wilson shall immediately obtain an order dismissing the Third-Party Claim on a without cost basis;

    e. The settlement is conditional upon the approval of this Court in the MGMIC receivership proceeding.[14]

16. The Action and the mortgages against the Timmins Property and the Timiskaming Property represent the last remaining assets of MGMIC. If the Settlement Amount is paid in a manner required by the Minutes of Settlement and the Action is dismissed on a

[14] Minutes of Settlement dated September 22, 2022 as amended by Amendment to Minutes of Settlement dated November 18, 2022 and Second Amendment to Minutes of Settlement dated December 22, 2022, Tabs 2B and 2C of the Receiver's Supplementary Motion Record;

without cost basis, the Receiver will complete final distributions to MGMIC's investors and bring a motion for an order discharging and releasing the Receiver.

17. The Wilson Settlement originally contained a confidentiality provision. On December 22, 2022, the parties agreed to amend the Wilson Settlement to remove the request to keep the Wilson Settlement confidential.

PART III – LAW AND ARGUMENT

18. In *Re Ravelston Corp*, Justice Farley set out the process for the Court to review a Receiver's request for an approval of settlement of a legal dispute:

> [3] The Receiver submitted that a motion to approve a settlement entered into by a court-appointed receiver is analogous to a motion to approve a sale of assets by a court-appointed receiver so that the 4 part set of principles/considerations of Royal Bank v. Soundair Corp. (1991), 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.) at para. 16 would come into play. See Re Bakemates International Inc., [2003] O.J. No. 3191 (S.C.J.), affirmed 2004, CarswellOnt. 2339 (C.A.). However, it seems to me that there is a subtle distinction to make between reliance on a receiver's commercial expertise concerning a recommended sale and the receiver's expertise in regards to a settlement of a legal dispute (while of course taking into account that such a receiver will have had appropriate legal advice from its own counsel). That distinction is based on the fact that the court is the "expert" in respect of the law and will generally be in a better position to assess the law involved in a situation than it would be as to the commercial aspects of a sale of property. In this regard, one may wish to consider the analogous situation of expert opinions as discussed in R. v. Mohan, 1994 CanLII 80 (SCC), [1994] 2 S.C.R. 9. Thus it seems to me that the court, with the assistance of counsel (both counsel supporting the approval of a settlement and counsel opposing), should conduct an analysis of the strengths and weaknesses of the case, including the general vagaries of litigation plus the benefits of certainty and the avoidance of delay concerning possible appeals, sufficient for the court to conclude that the proposed settlement fell within the range of what was fair and commercially reasonable. The case here involved an all or nothing result if the case went on to a court decision.[15]

[15] *Ravelston Corp., re* 2005 CanLII 32207 (On SC)

19. The Receiver respectfully submits that the Wilson Settlement represents a reasonable and commercial settlement in the circumstances and recommends that the Court approve it for the following reasons:

a. The allegations of fraud against the Katebians and the third-party claim raise difficulties in prosecuting the Action in a summary cost effective manner;

b. There are other proceedings currently being litigated between the Katebians, Wilson and Missaghi where credibility issues were raised involving similar transactions;

c. The Receiver does not have independent knowledge of the circumstances of MGMIC's loan and mortgage. If witness evidence is necessary, the Receiver will need to rely on the evidence of the Katebians and MGMIC's former lawyer, Rasik Mehta;

d. The Katebians have been found guilty of defrauding MGMIC's investors in a separate OSC proceeding;

e. Mr. Mehta was also found by the Law Society of Ontario to have participated and advanced fraudulent real estate transactions;

f. The environmental issues with the Timmins Property and the Timiskaming Property have rendered MGMIC's mortgages registered against those properties unrecoverable;

g. The Settlement Amount is reasonable when taking into account the risks and costs associated with litigating the Action to completion and the prospect of recovery of judgment from Wilson even if the Receiver is successful in the Action; and

h. The Wilson Settlement provides a timely and cost-effective resolution of the Action and this receivership proceeding and certainty of recovery for MGMIC stakeholders;

PART IV – ORDER SOUGHT

20. For the reasons detailed above, the Receiver respectfully requests that this Court grant the relief being sought on this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

SCHEDULE "A"

AUTHORITIES

1. *Re Ravelston Corp*, 2005 CanLII 32207 (ON SC).

SCHEDULE “B”

STATUTORY PROVISIONS

Not applicable.

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Proceedings commenced at TORONTO

FACTUM
OF THE RECEIVER
(SETTLEMENT APPROVAL MOTION)

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