VANCOUVER
MAR 09 2018
REGISTRY

No. VA-H170498
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FORJAY MANAGEMENT LTD.

PETITIONER

AND:

0981478 BC LTD., MARK CHANDLER, CANADIAN WESTERN TRUST COMPANY in trust, HMF HOME MORTGAGE FUND CORPORATION, 625536 BC LTD., JAMES MERCIER, MORRIS KADYLO, URSZULA PIASECZNA, US BANK NATIONAL ASSOCIATION, BARAMUNDI INVESTMENTS LTD., CHARANJIT KAUR, SIMRAT VIRDI, MUKHTIAR SINGH NIJJAR, MOHAN VILKHU, JASPREET SINGH KHATRA, AMANDEEP SINGH DHALIWAL, NIRMAL SINGH CHOHAN, SAJAL JAIN, SUPARNA JAIN, SABAL RANI BANSAL, SATPAL BANSAL, PARMINDER K. MANN, LEENA JAIN, VASANT PATEL, 1074936 BC LTD.,1084165 BC LTD., 1084164 BC LTD., 1084322 BC LTD., SURJIT KAUR PARMAR, HARBHAJAN SINGH PARMAR, DALJEET KAUR GILL, BHASHAM KAUR GILL, 812 CAPITAL HOLDINGS LTD., CATALYST ASSETS CORP., 0951019 BC LTD., WONDER MARBLE & STONE INC., INTECH PAY LTD., 1086286 BC LTD., 1085537 BC LTD., and 1083516 BC LTD.

RESPONDENTS

APPLICATION RESPONSE

Application Response of: PeeverConn Properties Inc., and Richard Johnston and Jacqueline Johnston (the "Application Respondents")

THIS IS A RESPONSE TO the Notice of Application of the Bowra Group Inc., the Receiver and Manager for 0981478 BC Ltd. (the **"Receiver"),** filed January 26, 2018.

Part 1: ORDERS CONSENTED TO

The application respondents consent to the granting of the orders set out paragraphs 1 and 2 of Part 1 of the Notice of Application on the following terms: With specific regard to the pre-sale contracts for Strata Lots 10, 11, and 28 (the "Strata Lots").

Part 2: ORDERS OPPOSED

The application respondents oppose the granting of the orders set out in paragraph 1(iii) of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents take no position on the granting of the orders set out in paragraph 2 of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

1. The Purchasers adopt and rely upon the terms set out in the Notice of Application filed January 26, 2018.

2. 0981478 B.C. Ltd. **("098")** is the debtor in this receivership proceeding and was previously the developer of the Murrayville House project located at 5020 - 221A Street, Langley, BC (the **"Development").**

3. Derek Peever, PeeverConn Properties Inc., and Richard Johnston (collectively, the "Purchasers") are Standard Pre-Sale Contract holders in the Development.

4. On or around October 24, 2015, Derek Peever and PeeverConn Properties Inc., (the **"PeeverConn Purchaser")** entered into an agreement of purchase and sale with 098, pursuant to which:
    a. 098 would sell to the PeeverConn Purchaser Unit 101, and 122 being units located in the Property and being Strata Lots 10 and 11, respectively, and legally described as:

        PID: 027-068-129
        Strata Lots 10 and 11, Section 6, Township 11
        New Westminster District Strata Plan EPS3408
        Together with an interest in the Common Property in proportion to the unit entitlement of the Strata Lot as shown on Form V **("Strata Lots 10 and 11");**

    b. The PeeverConn Purchaser would pay a deposit of $15,000.00.

5. On or around April 12, 2016, Richard and Jaqueline Johnston (the "Johnston Purchasers") entered into an agreement of purchase and sale with 098, pursuant to which:

    a. 098 would sell to the Johnston Purchasers Unit 220, being a unit located in the Property and being Strata Lot 28, and legally described as:

        PID:027-068-129
        Strata Lot 28, Section 6, Township 11
        New Westminster District Strata Plan EPS3408
        Together with an interest in the Common Property in proportion to the unit entitlement of the Strata Lot as shown on Farm V ("Strata Lot 28");

    b. The Johnston Purchasers would pay a deposit of $15,000.00.

6. Each of the Purchasers has complied with their obligations under the Agreements to date

7. Each of the Purchasers have been, at all material times, and remain ready, willing and able to complete the sale and purchase of their respective Strata Lots.

Part 5: LEGAL BASIS

8. A court-appointed receiver represents neither the security holder nor the debtor. As an officer of the court, the receiver is not an agent but a principal entrusted to discharge the powers granted to the receiver bona fide. Accordingly, the receiver has a fiduciary duty to comply with such powers provided in the order and to act honestly and in the best interests of all interested parties including the debtor. The receiver's primary duty is to account for the assets under the receiver's control and in the receiver's possession. This duty is owed to the court and to all persons having an interest in the debtor's assets, including the debtor and shareholders where the debtor is a corporation. As a court officer, the receiver is put in to discharge the duties prescribed in the order or in any subsequent order and is afforded protection on any motion for advice and directions. The receiver has a duty to make candid and full disclosure to the court disclosing not only facts favourable to pending applications, but also facts that are unfavourable.

Bennett on Receiverships*, 2nd ed. (Toronto: Thompson Canada Limited, 1999), at p. 180, as cited in *Royal Bank of Canada v. Penex Metropolis Ltd.*, 2009 Canlll 45848, at para. 22 *("Penex")

9. The Receiver's duty is to act for the benefit of all interested parties.

Penex, supra at para. 24

10. A receiver is obligated to act honestly and in good faith and to deal with the debtor's property in a commercially reasonable manner. In deciding whether or not to adopt a contract, the duty of the receiver is to exercise the care "comparable to the reasonable care, supervision and control that an ordinary man would give to the business if it were his own". If a decision by a receiver is within the broad bounds of reasonableness, and if the receiver conducts itself fairly and considers the interests of all stakeholders, the receiver's business decisions will not be interfered with lightly by the Court.

Penex, supra at paras. 25 and 26

11. A court-appointed receiver is not bound by existing contracts, but the receiver must exercise discretion before disclaiming a contract. If it seeks to break a material contract, it must seek leave of the court.

Penex, supra at paras. 23

12. A leading authority with respect to the court-ordered sale of assets is *Roya/ Bank of Canada v. SoundairCorp.,* 1991 Canlll 2727 (ON CA), [1991] O.J. No. 1137 (Ont. C.A.) *("Soundair").* According to *Soundair,* in assessing the reasonableness of a proposed sale, the court considers the following four factors:
    1. whether the party conducting the sale has made sufficient efforts to get the best price and has not acted improvidently;
    2. the interests of all the parties;
    3. the efficacy and integrity of the process by which offers were obtained; and
    4. whether there was any unfairness in the sale process.

13. Provided that the Receiver has exercised its judgment in accordance with the *Soundair* principles, this Hon. Court should reject the recommendation of a receiver only in the most exceptional circumstances.

Crown Trust Co. _v. Rosenberg_ (1986), 1986 CanLll 2760 (ONSC), 60 O.R. (2d) 87 (H.C.J.), para. 122.

14. By extending the completion date several times beyond the "ultimate" completion date set out in contracts and the disclosure statement, 098 waived its right to hold any party to the that "ultimate" completion date and all parties should be estopped from relying on that date because the Purchasers relied on the extensions to their detriment.

Part 6: MATERIAL TO BE RELIED ON

1. The pleadings herein;
2. The Affidavit of Derek Peever, dated March 1, 2018
3. The Receiver's Reports;
4. The Disclosure Statement; and
5. Such further and other materials as counsel may advise and this Honourable Court deems admissible.

The application respondents estimate that the application will take **5 days**.

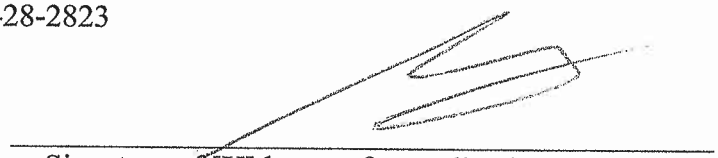
[ ] The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

[X] The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

Solimano Law
#1918-1030 West Georgia Street
Vancouver, BC V6E 2Y3

Fax: 604-428-2823

Date: 9/MAR/2018



Signature of [X] lawyer for application respondent
Diego A. Solimano