

Aug 3rd 2011

Aug 3/11

Adj. to August 5/11. Guarantor to file any responding materials by noon on August 4/11.

W. Hon - L.J.

August 5/11

- J. Salmas for the Receiver
- A. Van Soelen for GE Canada, supporting the motion.
- J. Kulathungam for the debtor and S. Suthakaran, a Guarantor

The Receiver seeks approval of the sales process set out in the Receiver's Second Report, which is not opposed by the debtor or Guarantor.

The Receiver also seeks approval for the borrowing of up to \$500,000 to finance property-related expenditures - principally removal of mould and asbestos, distributed to cost \$230,000, and repair of a non-structural boiler estimated to cost and other fabric repairs, estimated to cost \$147,000.

The debtor and guarantor oppose these proposed expenditures on the basis that there is no substance to the sales price will be increased by the amount of such expenditures. They argue that the Receiver should be required to obtain and approval to this effect before proceeding with these expenditures.

This argument is rejected on the following reasons: can This argument to think that such an appraisal can Fund, it is unrealistic to think that such an appraisal of the higher and better of the property and the value of property or such basis. In this case,

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ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD
(Returnable August 3, 2011)

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capacity as the Court-appointed Receiver of
1733073 Ontario Inc.



there is no ~~dispute that~~ ^{disagreement} that the highest and best use is as a continuing hotel business. ~~It is not the~~ Any predictions as to the value of such property or alternative scenarios relating to the state of demand of the property fall outside the scope of any appraisal, and are inherently unpredictable and ^{and} incapable of certainty.

Second, insofar as any advice can be given on this issue, the best guidance comes from commercial realtors who are experienced with similar property issues and are active in the market. The Receiver contacted three qualified firms who were asked to advise with respect to the best marketing process for the property. Each was made aware of the property ^{condition} ~~status~~ report. The Receiver advised the court orally that this broker advised that in its opinion the sale price of the property could be maximized by making the proposed expenditures up to \$500,000.

Third, even without such advice, I think it is evident that the sales price would be maximized by making such expenditures. They are all critical to the continued operation of the business, which is necessary to implement a going-concern sale. More important, both the upgrade repair and upgrade of the boiler and particularly the removal of mould and asbestos can involve considerable cost uncertainty and risk that a purchaser would only take on by making provision in the form of a substantial reduction in its offering price, particularly where a Receiver is selling on an 'as is, where is' basis, without representations and warranties. Fourth, ~~even apart from~~ ^{apart from} these financial issues, there are compelling reasons for effecting this ^{work} ~~report~~ rather than leaving ~~it~~ to a purchaser. If the ~~business~~ ^{work} is to be sold as a going concern, it requires heat in the autumn and winter to operate. Given the timing and uncertainty of the ~~in connection~~ ^{in connection} ~~herewith~~, of the sales process, the boiler repair cannot wait. In addition,

The Reviewer has advised ^{orally} that it has been contacted
by one or more employees who are expressing
concerns about the environmental condition of
the property and are seeking assurances that their
removal will proceed expeditiously. It goes without
saying that maintenance of a stable, committed
work force is necessary if the ~~business~~ value of
the business on a going concern basis is to be
maximized in the sales process.

Accordingly, order to go on the form
attached.

William - Supt J.