



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00655706-00CL

DATE: December 12th 2022

NO. ON LIST: 3

TITLE OF PROCEEDING: **1199403 ONT INC V SAPTASHVA SOLAR SA**

BEFORE JUSTICE: **CONWAY**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
MICHAUD, DOM	Counsel for the court Appointed Receiver – Ira Smith Trustee & Receiver Inc.	dmichaud@robapp.com
SMITH, IRA	Court Appointed Receiver – Ira Smith Trustee & Receiver Inc.	ira@irasmithinc.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
TURK, STEPHEN	1199403 Ontario Inc., 1274442 Ontario Inc., Gulu Thadani and 1034523 Ontario Ltd.	sturk@stephenturklaw.com
MORRISON, ALLAN	EnviroEn Inc. and Harshal Gunde	allan@morrisonlaw.ca

ENDORSEMENT OF JUSTICE CONWAY:

This matter returned to me today following another adjournment from December 7th. In my endorsement that day, I said that I was granting the further adjournment so that Hexa could satisfy the Receiver that its offer to put forth a stalking horse offer was real. The history of Hexa's conduct over the last month is set out in the Receiver's reports. The Receiver has now set out in detail in its second supplementary report what has transpired since December 7th. Hexa has not provided a deposit to the Receiver's counsel's trust account – only to debtor counsel Mr. Morrison's account – all despite Mr. Michaud providing the bank account

information to Mr. Morrison on December 7th (and confirming that if an agreement was not signed, the deposit would be fully refundable). Mr. Morrison said that he could transfer the deposit to Mr. Michaud's account today. I see no reason why that could not have happened already. Further, Hexa has not had independent counsel contact Mr. Michaud or the Receiver. It is still communicating through Mr. Morrison, counsel for the debtor. I see no reason why independent counsel could not have been retained and communicated with Mr. Michaud before today – indeed, I had expressly referred to that in my December 7th endorsement.

Mr. Morrison seeks another adjournment of the Receiver's motion. Given that I have already granted two adjournments and the Hexa situation is anything but clear, I am not prepared to grant yet another adjournment.

There are two motions before me. The first is the Receiver's motion to delay a sales process at this time and to carry out the Operations Plan to operate the business, funded by the Applicant. The Receiver recommended this approach as set out in its First Report, para 75, since the Sculler LOI was withdrawn, other marketing initiatives went nowhere, the assets were underperforming, and the Applicant was willing to fund continued operations to maximize the value of the company's assets and eventual recovery to stakeholders.

The Receiver then agreed to provide an "off-ramp", namely that the approval of the Operations Plan would be without prejudice to any stakeholder in the receivership bringing a motion on at least 10 days' notice to terminate the plan and to seek approval of a sales process.

Notwithstanding this addition to the draft order, the Respondent brought a cross-motion seeking an order requiring the Receiver to sell the assets to Hexa, an order reviewing the Receiver's costs, and an order appointing a solar energy expert to conduct a review of the projects.

With respect to the motion to approve the Operations Plan and the cross-motion to approve the sale to Hexa, I am granting the former and dismissing the latter. As described above, the Receiver continues to recommend the Operations Plan route, with the off-ramp. The Receiver and its counsel have diligently considered the Hexa LOI and followed this court's directions in that regard. The Receiver advised the court that after that process, it has less confidence in Hexa than it had before. Based on the record before me, I accept the Receiver's recommendation. Approving the Operations Plan will move this receivership forward, while preserving rights of stakeholders to come before this court to seek a sales process and terminate the Operations Plan. It is without prejudice to Hexa coming forward with a proposed LOI that addresses the Receiver's concerns.

With respect to the remainder of the relief sought by the Receiver, I am approving it. All of Mr. Gunde's allegations of mismanagement by the Receiver have been adequately addressed in the Supplementary Report. Further, while Mr. Gunde takes issue with the magnitude of the Receiver's costs, there is no basis for me to find that the Receiver has unnecessarily run up costs. It is clear that the Receiver has had to expend considerable time on this receivership for reasons that include the condition of the solar panels themselves and the state of the company books and records. Finally, I cannot accept Mr. Gunde's directive that an expert be retained to conduct an independent review of the Projects. The Receiver has described the steps that it has taken to ascertain the condition of the projects and what must be done to make them fully operational. The Applicant supports these steps. I am not prepared to burden the company with additional costs at Mr. Gunde's direction.

I am therefore granting the relief set out in the revised draft order and dismissing the Respondents' cross-motion. I note that most of the maintenance work is not going to occur until spring 2023. If a viable stalking horse agreement can be put into place in the coming months, that would avoid those maintenance costs being incurred while the matter returns to court.

The Receiver seeks its costs. It submits that the Respondents drove up the costs of this motion by repeated and unproductive attendances and adjournments. It submits that the costs of its legal counsel should not have to be borne by the creditors of the company. I agree. I exercise my discretion to award costs to the Receiver on a partial indemnity basis in the amount of \$4,000, all inclusive, which I consider fair and reasonable under the circumstances. Those costs are payable by Saptashva and Mr. Gunde, the moving parties on the cross-motion.

Conway J.