

CITATION: York (Regional Municipality) v. Thornhill Green Co-operative Homes
Inc., 2010 ONCA 393
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COURT OF APPEAL FOR ONTARIO

Weiler, Blair and Rouleau J.J.A.

BETWEEN:

The Regional Municipality of York

Applicant
(Respondent in Appeal)

and

Thornhill Green Co-operative Homes Inc. and Co-operative Housing Federation of
Canada

Respondents
(Appellants)

Frank Bennett, Murray Klippenstein and Basil Alexander, for the appellants

Mervyn D. Abramowitz and Stephen C. Wolpert, for Mintz & Partners Limited, Receiver

Roger Jaipargas and Douglas O. Smith, for the respondent, Regional Municipality of
York

Daniel Kuzmyk, for Housing York, Inc.

Heard: January 12, 2010

On appeal from the Order of Justice Geoffrey Morawetz of the Superior Court of Justice
(Commercial List), dated July 16, 2009.

R.A. Blair J.A.:

Introduction

[1] On July 16, 2009, Justice Morawetz approved a receivership sale involving 101 non-profit co-operative social housing units which comprise the assets of Thornhill Green Co-operative Homes Inc.

[2] Thornhill Green is a co-operative corporation established to provide affordable housing. As such, it is regulated and governed by provincial legislation pertaining both to co-operative housing and social assistance housing. The Regional Municipality of York is responsible under that legislation for supervising individual co-operatives and other social housing organizations in the region.

[3] Because of various financial difficulties it had encountered, Thornhill Green was placed in receivership in 2006 at the instance of the Region. Mintz & Partners Ltd. was appointed receiver and manager and ultimately recommended the sale here in question – to Housing York Inc., a body controlled by the Region.

[4] The appellants object to the approval of the sale. They submit that non-profit housing co-operatives pose special challenges in a receivership context and that the factors to be considered in the exercise of the court's discretion when approving such a sale are different from those normally applicable in an ordinary commercial receivership. They contend that the motion judge did not properly consider the necessary co-operative-related factors in approving the sale and ask that it be set aside.

[5] I do not agree that the motion judge erred in this respect, and for the reasons that follow would dismiss the appeal.

Facts

[6] As a co-operative corporation, Thornhill Green (sometimes referred to also as the “Co-op”) is governed by the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35 and the *Social Housing Reform Act, 2000*, S.O. 2000, c. 27. The Co-op was created as part of a provincial government program focused on providing affordable housing, with a mixture of subsidized and market rate units as part of its housing complex. It consists of 101 townhouses located near Yonge Street in Thornhill. Thornhill Green owned the land and buildings, which it purchased with provincial funding and long term mortgages.

[7] There are more than 550 such non-profit housing co-operatives in Ontario, all governed by the special rules of the *Co-operative Corporations Act* and subject to the *Social Housing Reform Act*. Most of these co-operatives (including Thornhill Green) are members of the appellant Co-operative Housing Federation of Canada.

[8] The *Social Housing Reform Act* designates municipalities as regional “Service Managers”, charged with supervising individual co-operatives and social housing organizations in their municipalities or regions. The Region is therefore the Service Manager for Thornhill Green. As such, it is responsible for administering and funding the housing programs. This responsibility includes providing ongoing annual subsidies to housing providers such as Thornhill Green.

[9] In 2005 Thornhill Green's financial difficulties began to mount. It approached the Region, as its Service Manager, for possible additional mortgage financing in the amount of \$2.1 million to fund a number of required capital repairs. The Region agreed to provide the funding, but not before exercising its powers under the *Social Housing Reform Act* in July 2006 to appoint Mintz & Partners (the "Receiver") as a private receiver and manager of the Co-op to supervise the work to be done and to improve certain operational financial difficulties that the Region believed to exist at the Co-op as a result of mismanagement by its board of directors (the "Board").

[10] The Receiver reported that the Board's shortcomings included the lack of adequate costs controls, its failure to maintain rents at appropriate rates, and the accumulation of an operating deficit exceeding \$200,000 that depleted Thornhill Green's capital reserve fund to almost nil. In June 2007 Justice Pepall granted an Order appointing the Receiver as a court-appointed receiver and manager pursuant to s. 116(1)6 of the *Social Housing Reform Act* and s. 101 of the *Courts of Justice Act* (the "Appointment Order"). This application was not opposed.

[11] In the course of carrying out the required capital repair work, the Receiver discovered asbestos in the Units. This resulted in an additional \$600,000 cost to complete the repairs. The Region refused to advance these additional funds, taking the position as Service Manager that it:

- a) would not advance any further funds to the Receiver for construction purposes, because it wished to end the

receivership and put in place a more permanent arrangement;

- b) would not approve the taking of any additional debt by Thornhill Green, because the Co-op did not have the capacity to repay its existing debt, let alone take on additional obligations;
- c) would not support the return of Thornhill Green and its property to the Board or to a new Thornhill Green Board; and,
- d) would only advance the necessary funds for the completion of the necessary capital repairs if the Thornhill Green assets were sold to Housing York and Housing York became the housing provider under the legislation.

[12] As set out in its First and Second Reports to the Court, the Receiver considered the various options open to it, including the possibility of returning governance to the then-existing or a newly-appointed Board of Thornhill Green, the sale of the assets to another entity capable of maintaining the complex as social housing, continuation of the receivership indefinitely, and the sale of the assets to Housing York. The Receiver did not consider offering the assets for sale on the open market because that would potentially have removed Thornhill Green from the social housing stock. It ultimately concluded that the sale to Housing York was the only viable option. In arriving at that conclusion, the Receiver recognized that although Housing York was a not-for-profit corporation with the objective of promoting social housing, it was not a co-operative

corporation regulated by the *Co-operative Corporations Act* and therefore the proposed transaction would inevitably result in changes to the status of the Thornhill Green residents and to the governing structure of Thornhill Green: the residents would no longer be members of a co-operative, but would become tenants of Housing York.

[13] The Receiver concluded, however, that on balance the change in governance structure was desirable and, overall, would benefit the stakeholders of Thornhill Green, including the residents. In part this conclusion was rooted in the reality of the Region's position, outlined above, that it would not advance further funding to Thornhill Green itself (with or without a newly constituted Board) and would not fund the capital repairs unless the assets were sold to Housing York. In part it was driven by the Receiver's view that much of the required work was the result of the Board's failure to deal with the problems over the years and by its perception that the members were not particularly interested in assuming the responsibilities of managing of the complex.

[14] On this basis, the Receiver applied to the Court for an order approving the sale to Housing York, vesting the Thornhill Green assets in the purchaser and granting other related relief. Thornhill Green brought a cross-motion seeking to vary the Appointment Order by removing the Receiver's power to sell the assets except in the ordinary course of business and, as well, to discharge Mintz & Partners as receiver and manager.

[15] Morawetz J. granted the Receiver's motion and dismissed Thornhill Green's cross-motion to vary the Appointment Order. The cross-motion seeking to discharge the

Receiver was withdrawn at the opening of argument. Only the Order approving the sale is the subject of this appeal. The cross-motion order is not appealed.

[16] Before turning to the issues and the motion judge's determination, I observe that the receivership proceedings have been hotly and bitterly contested throughout. Various members opposed the receivership once they became aware of it (although the Appointment Order was not contested and no attempt has ever been made to set it aside), resisted the Receiver's attempts to carry out certain work in the units, threatened to sue the Receiver, and used the meetings with the Receiver to voice their individual concerns. The appellants were upset when the Region first appointed the Receiver in 2006 without prior notice or consultation with the Board, and were doubly so when the Region and the Receiver decided to sell the assets without consulting with or informing the Board in advance.

[17] The appellants were particularly incensed when – they say – as part of its plan to obtain the assets, the Region provided its necessary consent to the proposed sale under s. 95 of the *Social Housing Reform Act* in February 2008 without any prior notice to or consultation with the Board or the members of Thornhill Green. This decision became the subject of an application for judicial review to the Divisional Court. The Divisional Court refused to quash the Region's decision to consent to the sale, given the urgency of the situation and the fact that the approval motion was then pending before Morawetz J., but it found, nonetheless, that the Region had not met its obligations of procedural fairness to the Co-op in the process.

The Issues

[18] The appellants raise the following issues on appeal:

- 1) Do the principles that govern the approval of a receiver's sale in the context of a co-operative non-profit social housing project differ from the standard principles that govern such a sale in an ordinary commercial transaction?
- 2) In this context, did the motion judge err,
 - a) in characterizing Thornhill Green's real estate and buildings as having no more than a "phantom equity";
 - b) in failing to recognize and to give effect to the special rights of the members respecting participation in management of the Co-op and security of members' tenure, flowing from the *Co-operative Corporations Act*;
 - c) in failing to consider the availability of remedial education opportunities to assist the Board in improving its managerial skills and developing better management practices; and
 - d) in failing to give proper effect to the Divisional Court's findings of lack of procedural fairness?

[19] None of these complaints leads me to conclude that the motion judge's discretionary approval of the sale should be set aside.

Analysis

The Standard of Review

[20] An order approving a sale sought by a Receiver is discretionary and attracts a great deal of deference from appellate courts, which will only interfere after exercising considerable caution and only in special circumstances. The trial judge must have erred in law, seriously misapprehended the evidence, exercised his or her discretion based upon irrelevant or erroneous considerations, or failed to give any or sufficient weight to relevant considerations. Appellate courts rely on the expertise of their appointed receivers and are reluctant to second guess their considered business decisions and recommendations. Finally, courts will assume that receivers are acting properly unless the contrary is shown. See *Regal Constellation Hotel Ltd. (Re)* (2004), 71 O.R. (3d) 355, at paras. 22-23 (C.A.).

The Applicable Principles

[21] The standard criteria that are to be applied when considering the approval of a sale recommended by a receiver are well established. Commonly referred to as “the Soundair principles”, they were set out in this Court’s decision in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) and re-affirmed in *Regal Constellation*. In the latter decision, the Court summarized the applicable principles as follows, at paras. 24-26:

In *Soundair*, at p. 6, Galligan J.A. outlined the duties of a court when deciding whether a receiver who has sold a

property has acted properly. Those duties, in no order of priority, are to consider and determine:

(a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) the interests of the parties;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.

In *Soundair* as well, McKinlay J.A. emphasized [at p. 19 O.R.] the importance of protecting the integrity of the procedures followed by a court-appointed receiver “in the interests of both commercial morality and the future confidence of business persons in their dealings with receivers”.

A court-appointed receiver is an officer of the court. It has a fiduciary duty to act honestly and fairly on behalf of all claimants with an interest in the debtor’s property, including the debtor (and, where the debtor is a corporation, its shareholders). It must make candid and full disclosure to the court of all material facts respecting pending applications, whether favourable or unfavourable. See *Toronto-Dominion Bank v. Usarco Ltd.* (2001), 196 D.L.R. (4th) 448 (Ont. C.A.), per Austin J.A. at paras. 28-31, and the authorities referred to by him, for a more elaborate outline of these principles. It has been said with respect to a court-appointed receiver’s standard of care that the receiver “must act with meticulous correctness, but not to a standard of perfection”: *Bennett on Receiverships*, 2nd ed. (Toronto: Carswell, 1999) at p. 181, cited in *Toronto-Dominion Bank v. Usarco*, supra, at p. 459.

[22] Mr. Bennett submits on behalf of the appellants that different considerations apply when the receivership sale sought to be approved involves a non-profit housing co-operative subject to the provisions of the *Co-operative Corporations Act* and the *Social*

Housing Reform Act. He contends that such receiverships are different – frequently, as is the case here, they are often not about debt recovery – and they involve important statutory co-operative roles and rights under the *Co-operative Corporations Act* that may be affected if the property is sold. As a result, he argues that there is a particularly heavy onus on the receiver in such situations to satisfy the court that the sale of assets is necessary and that the process was fair to the co-operative and its members. Indeed, he submits that a receiver should only rarely be able to sell the assets of a co-operative corporation, and then only for purposes of debt recovery. Problems that primarily involve financial mismanagement by the board can be dealt with through proper education and training of the members who sit on co-operative boards, he says.

[23] I do not think that different *general* considerations apply when the receivership sale sought to be approved involves a non-profit housing co-operative subject to the provisions of the *Co-operative Corporations Act* and the *Social Housing Reform Act*. That is not to say, however, that the special considerations arising in such circumstances are not to be taken into account.

[24] In the course of assessing the receiver's request for approval, the court will weigh the special factors pertaining to non-profit co-operative social housing, just as it would consider any unique circumstances in any receivership situation. Without seeking to be exhaustive or to provide any particular order, those factors would include such things as (i) the continued viability of the project in its existing form; (ii) the statutory rights of co-operative members under the *Co-operative Corporations Act* to participate in

management and to have greater security of tenure; (iii) the particular impact of legislative or other strictures on the value of the property in question, and (iv) the need to preserve the availability of social public housing, whatever form that vehicle might take. But these factors will fall to be considered under some or all of the four Soundair criteria – the best efforts requirement on the part of the receiver, the interests of the parties, the efficacy and integrity of the process and the existence of any unfairness in the working out of the process. The need to be alive to these special factors does not change the general Soundair principles that normally govern the court’s approval of a receivership sale.

[25] The notion that a receiver should only be entitled to sell the assets of a non-profit housing co-operative for debt recovery purposes is not consistent with the provisions of the *Social Housing Reform Act* and the Regulation passed pursuant to that section. The effect of those provisions is to empower a receiver or receiver and manager to “sell, lease, give as security or otherwise dispose of the housing project and the assets of the housing provider.”

[26] Section 116 of the Act provides that a service manager may obtain the appointment of a receiver or a receiver and manager “[i]f a triggering event occurs.” Section 115 defines “triggering events” for purposes of the Act. There are fourteen such events, only two of which involve the housing provider becoming bankrupt or insolvent or being unable to meet its obligations as they become due. Others include the housing provider contravening the Act or regulations, incurring material expenses that are

excessive, incurring an accumulated deficit that is material and excessive, and failing to operate the housing project properly. No limitation is imposed on the power of the receiver or receiver and manager to sell the property to correct such triggering events. In short, there is nothing in the *Act* or regulation to restrict the power of sale to situations of debt recovery.

The Motion Judge's Decision

[27] The motion judge applied these very principles. He was acutely alive to the special considerations that were in play because of the co-operative/social housing nature of the receivership. While he did not accept the appellant's submissions on the issues they raised before him – and raise here again – he considered those issues.

[28] For example, in the context of dealing with the cross-motion to delete the power of sale from the Receiver's powers, the motion judge "acknowledged that the circumstances surrounding a potential remedy of sale in the context of a social housing complex, is arguably quite different than a remedy of sale in respect of an operating business," and later, when dealing with the approval of the sale, he re-affirmed that "certain of the issues involved in this receivership are unique to the fact that this matter involves a rental housing project that is part of the social housing network in the Region." His reasons make it clear that he understood he was dealing with social housing in the context of a co-operative corporation. The motion judge reviewed the circumstances leading up to the

receivership – outlined above – and to the decision to sell the assets, including the proceedings before the Divisional Court (to which he referred at length).

The Financial Viability of Thornhill Green and the “Market Value” of its Assets

[29] Thornhill Green and the Co-operative Housing Federation argued before the motion judge that Thornhill Green was financially and organizationally viable on a going-forward basis and that the assets had a “market value” of \$14.5 million against liabilities of \$8.9 million, leaving a net equity of \$5.6 million. They argue here that the trial judge erred in rejecting this submission, thereby permitting the purchaser – a wholly owned subsidiary of the Region – to obtain the property at a windfall price. Because the *Co-operative Corporations Act* provides that upon dissolution of a co-operative any net proceeds are to be transferred to a charity or to another housing co-operative, the appellants submit that the motion judge’s dismissal of this equity as a “phantom equity” not only tainted his assessment of the Receiver’s motion, but also wrongfully deprived other worthy projects of the benefit of this net equity on the sale.

[30] The motion judge properly rejected the appellant’s submissions in this regard, in my opinion. He correctly pointed out that the submissions were misconceived because of the reality of the legal context in which Thornhill Green holds the assets. Particularly telling amongst the impediments were the fact that (i) the property cannot simply be sold on the open market because under s. 95 of the *Social Housing Reform Act*, Thornhill Green cannot offer or dispose of it without the consent of the Minister and (ii) Thornhill

Green cannot encumber or dispose of the property without the Region's consent in view of the various covenants given by Thornhill Green to the Region regarding its credit facilities. Not only did these factors hinder the sale of the assets and undercut their "market value," they undermined any ability of the Co-op to raise the financing necessary to fund the very considerable upgrades required and the long-term capital and maintenance needs Thornhill faced. Contrary to the appellants' contention, it was unrealistic to expect that the Region would grant its consent to the required financing, and unlikely that the Minister would do so in the face of the Region's position.

[31] In these circumstances, the motion judge's conclusion that, because of the relevant statutory framework and the other factors involved, the suggested net equity of \$5.6 million was a "phantom equity" and not comparable to equity held by an ordinary business corporation, was quite accurate.

Special Co-operative Residency and Participation Rights

[32] The appellants next contend that the motion judge seriously misconstrued the nature of co-operative members' rights "to participate fully and equally in [the Co-op's] operation and management," and to enjoy "security of tenure comparable to private ownership": *McBride v. Comfort Living Housing Co-operative Inc.* (1992), 7 O.R. (3d) 394, at p. 401 (C.A.). I do not agree.

[33] First, the motion judge acknowledged the fact that the proposed sale would involve a change in status of the residents from members of a co-operative corporation

(with the attendant rights of participation and security of tenure flowing from the operation of the *Co-operative Corporations Act*) to tenants whose rights will be governed by the *Residential Tenancies Act*. He noted that the proposed sale would result in leases that would preserve the ability of the former co-operative members to live in their same units, with the same or similar rental obligations, and that Housing York has not-for-profit objectives similar to those of Thornhill Green – to provide social housing in an effective manner. The motion judge said, for example:

It is recognized that currently each member of Thornhill Green is the beneficiary of protected housing rights, including occupancy rights and the right to participate in management, confirmed in the CCA and that a sale to HYI will eliminate occupancy rights of members and replace them with tenancy rights.

However, the provisions of the SHRA, including those provisions dealing with the Receiver's powers to sell the assets of a housing provider, apply despite any act or regulation to the contrary. Further, pursuant to s. 156 of the SHRA, where there is a conflict between any act or regulation and the SHRA, it is the SHRA that prevails.

[34] In addition, the motion judge recognized the conflict between the rights enjoyed by co-operative members under the *Co-operative Corporations Act* and the consequences flowing from the proposed sale of the assets explicitly permitted under the *Social Housing Reform Act* that would effectively eliminate some of those rights. However, as he correctly identified, s. 156 of the *Social Housing Reform Act* specifically provides that the provisions of that *Act* – including those provisions dealing with the Receiver's power to sell the assets of a housing provider like Thornhill Green – apply despite any act or

regulation to the contrary. Moreover, the same section makes it clear that in the event of a conflict between the *Social Housing Reform Act* and any other act or regulation, the *Social Housing Reform Act* prevails. It follows from this statutory framework that the rights accruing to co-operative members under the *Co-operative Corporations Act* with respect to participation in management of the Co-op and to security of tenure need not outweigh the Receiver's power to sell, even to a non-co-operative corporation purchaser, in appropriate circumstances. It will depend on the circumstances. Co-operative members' rights are factors to be considered – as the motion judge did here – but in the end, like many other “rights” in a receivership, they may end up being compromised.

[35] The motion judge was satisfied that in these circumstances, the underlying financial problems demanded a sale because the *status quo* was not an acceptable alternative. As he said:

The inescapable conclusion is that the co-operative governance model of Thornhill Green has not worked as envisioned. In my view, an operational change is necessary.

[36] He concluded that the only viable alternative to the *status quo* was the proposed sale to Housing York. I see no basis for interfering with his balancing of the differing interests in this regard.

Training and Education for Board Members

[37] Mr. Klippenstein and Mr. Bennett placed considerable emphasis in oral argument on the motion judges' alleged failure to consider the possibility of assistance and training

for the Co-op members and directors as a means of overcoming the problems of financial mismanagement, thereby providing an alternative to sale and permitting the project to continue under the existing co-operative framework. I am not persuaded, however, that this is a basis for interfering with his discretion to approve the sale.

[38] It does not follow from the fact that the motion judge may not have referred to this issue that he did not consider it: *R v. Sheppard*, [2002] 1 S.C.R. 869, at paras. 23 and 26. There is no requirement to “demonstrate that all aspects of the evidence have been considered, nor is it necessary that reasons be given for every point raised in the case”: *Canadian Broadcasting Corporation Pension Plan v. BF Realty Holdings Ltd.* (2002), 214 D.L.R. (4th) 121 (Ont. C.A.), at para. 64. In the end, an appellate court is only justified in intervening on such a ground if the omission in the reasons leads to a reasonable belief that the motion judge “must have forgotten, ignored or misconceived the evidence *in a way that affected his conclusion*”: *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, at para. 39 (emphasis added).

[39] I accept the appellants’ submission that attempts to educate co-operative housing providers in order to assist them to overcome managerial difficulties may be important and are consistent with the purpose of the *Social Housing Reform Act*, which is “to provide for the efficient and effective administration of housing programs by service managers” (s. 1). Assisting and educating housing providers is preferable to limiting or punishing them: see *Labourview Co-operatives Homes Inc. v. Chatham Kent*

(Municipality) (2007) O.A.C. 65 (Div. Ct.), at para 28. In that same case, at para. 23, the Divisional Court noted that:

Housing programs are social programs, intended to generally assist society in the province, by providing financial and material assistance to the housing needs of the disadvantaged. The enforcement provisions of the *SHRA* must be interpreted so as to best ensure the objects of the Act.

[40] Here, there is some evidence that educational programs might be available through the Co-operative Housing Federation of Canada. However, there is simply no evidence that any of the directors or members of Thornhill Green expressed any interest in or willingness to participate in any such programs. If the Receiver was to focus on the rehabilitation of the Co-op to health rather than on its sale and abolition, as the appellants submit, one would have expected some evidence on the part of those involved of their willingness to participate in the rehabilitative exercise. There was none. At no time did the appellants ever provide to the Receiver, or to the Court, any serious or substantive plan to put improved management in place or to educate and assist the members and Board to put better financial and other management practices in place.

[41] Accordingly, there was no basis upon which the motion judge could credibly find that simply educating and providing assistance to members of the Co-op's Board would resolve the underlying significant financial and management problems confronting Thornhill Green. The "education and training" argument was not viable. The motion judge can hardly be criticized for not mentioning it in his reasons, in my view.

[42] I would not give effect to this ground of appeal.

Procedural Fairness

[43] Nor do I accept the argument that the motion judge failed to give proper effect to the finding of the Divisional Court that the Region had not met its obligations of procedural fairness to Thornhill Green. The appellants say this finding represented a serious infringement of the Co-op's legitimate procedural expectations, and therefore contaminated the sale proceedings beyond redemption. In addition, they contend that the Region was seeking to sell the assets to its own subsidiary, at a price below the Co-op's net equity, and this, coupled with the Region's own actions in cutting off further funding, created an unfair process that the motion judge failed to examine.

[44] The proceedings before Morawetz J. were adjourned pending the outcome of the application for judicial review before the Divisional Court. That Court did not suggest to the motion judge that he treat its procedural fairness finding as determinative. In deciding not to quash the Region's consent to the proposed sale, the Court simply observed that Thornhill Green would have "ample opportunity to address all issues fully and fairly in the proceedings pending before [the motion judge]." Following the Divisional Court's decision, the parties all had the opportunity to, and did, file further written submissions with the motion judge. The motion judge considered those submissions.

[45] In particular, he considered the submission that “due in part to the Region’s conduct, the Receiver was unable to exercise its duty to act ‘reasonably, prudently and fairly and not arbitrarily’ in selling the assets.” He rejected the argument, noting that the Region was under no obligation to extend additional funding or credit to Thornhill Green and concluding that, although the Divisional Court had “found fault in the manner in which the Region initially proceeded,” the Court’s primary focus was “on the practical realities facing Thornhill Green, namely, that the unresolved underlying financial problems of [the Co-op] required attention.” I add, as well, that there is no suggestion in this case that the Region, as Service Manager, abused its power or acted contrary to the intent of the legislation in refusing to authorize further borrowing by Thornhill Green.

[46] With respect to the Receiver’s overall conduct, and the allegation that it had breached its fiduciary obligations to all interested parties, the motion judge said:

I do not give effect to this submission. The Receiver has been in place for a considerable period of time. I have dismissed the cross-motion to vary the powers of the Receiver and the motion to discharge the Receiver has been withdrawn. I am satisfied that the Receiver has acted within its mandate and has reported to court and has proposed a Transaction which, in the circumstances, I find to be fair and reasonable. In my view, the Receiver has carefully considered the available options. In arriving at its recommendation that the Transaction be approved, I find that the Receiver has taken into account the interests of the members of Thornhill Green and has proposed a resolution that substantially protects the interests of the residents. The Receiver has also proposed a transaction which reflects the commercial realities of the situation and addresses in a comprehensive manner the financial problems currently facing Thornhill Green.

I am satisfied that the Receiver has acted fairly and diligently in carrying out its activities during its appointment and, in particular, the sales process. In my view, the Receiver has acted in accordance with the *Soundair* principles set out above.

[47] These findings and conclusions are amply supported on the record. They were made on an application of the appropriate *Soundair* principles, including a full consideration of the particularly distinctive factors arising from the co-operative social housing dynamics of the case. This is what was required of the motion judge. I see no basis for interfering with the exercise of his discretion in the circumstances. In fact, I agree with it.

Disposition

[48] For the foregoing reasons, I would dismiss the appeal.

[49] The respondents are entitled to their costs of the appeal, fixed at \$30,000.00 inclusive of GST and disbursements to the respondent Mintz & Partners Limited and \$20,000.00 all inclusive to the respondent Region.

RELEASED: JUN 02 2010

Kmu

RJ Blain J.S.
I agree KM Wester J.S.
I agree Paul Gordon J.S.