

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM COURT OF APPEAL FOR ONTARIO)**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1) 6
OF THE *SOCIAL HOUSING REFORM ACT, 2000*, S.O. 2000, c. 27
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43**

BETWEEN:

**THORNHILL GREEN CO-OPERATIVE HOMES INC. and
CO-OPERATIVE HOUSING FEDERATION OF CANADA**

**Applicants
(Appellants)**

and

THE REGIONAL MUNICIPALITY OF YORK

**Respondent
(Respondent)**

REPLY FOR LEAVE TO APPEAL

**THORNHILL GREEN CO-OPERATIVE HOMES INC. and
CO-OPERATIVE HOUSING FEDERATION OF CANADA**

(Pursuant to r. 28 of the Rules of the Supreme Court of Canada, SOR/2002-156)

KLIPPENSTEINS

Barristers & Solicitors
160 John Street, Suite 300
Toronto, Ontario M5V 2E5

Murray Klippenstein

Basil Alexander

Tel.: (416) 598-0288

Fax: (416) 598-9520

murray.klippenstein@klippensteins.ca

basil.alexander@klippensteins.ca

Counsel for the Applicants

LANG MICHENER LLP

Barristers and Solicitors
50 O'Connor Street, Suite 300
Ottawa, Ontario K1P 6L2

Eugene Meehan, Q.C.

Tel: (613) 232-7171

Fax: (613) 231-3191

emeehan@langmichener.ca

Agent for the Applicants

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM COURT OF APPEAL FOR ONTARIO)**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1) 6
OF THE *SOCIAL HOUSING REFORM ACT, 2000, S.O. 2000, c. 27*
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43***

BETWEEN:

**THORNHILL GREEN CO-OPERATIVE HOMES INC. and
CO-OPERATIVE HOUSING FEDERATION OF CANADA**

**Applicants
(Appellants)**

and

THE REGIONAL MUNICIPALITY OF YORK

**Respondent
(Respondent)**

REPLY FOR LEAVE TO APPEAL
THORNHILL GREEN CO-OPERATIVE HOMES INC. and
CO-OPERATIVE HOUSING FEDERATION OF CANADA
(Pursuant to r. 28 of the *Rules of the Supreme Court of Canada, SOR/2002-156*)

KLIPPENSTEINS
Barristers & Solicitors
160 John Street, Suite 300
Toronto, Ontario M5V 2E5

Murray Klippenstein
Basil Alexander
Tel.: (416) 598-0288
Fax: (416) 598-9520
murray.klippenstein@klippensteins.ca
basil.alexander@klippensteins.ca

Counsel for the Applicants

LANG MICHENER LLP
Barristers and Solicitors
50 O'Connor Street, Suite 300
Ottawa, Ontario K1P 6L2

Eugene Meehan, Q.C.
Tel: (613) 232-7171
Fax: (613) 231-3191
emeehan@langmichener.ca

Agent for the Applicants

BENNETT & COMPANY
Barristers and Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

Frank Bennett
Tel: (416) 363-8688
Fax: (416) 363-8083
bennett@ican.net

Counsel for the Applicants

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario M5H 4Y4

Douglas O. Smith
Roger Jaipargas
Caitlin Sainsbury
Tel: (416) 367-6015/6266/6438
Fax: (416) 361-2725/7067/2745
dsmith@blgcanada.com
rjaipargas@blgcanada.com
csainsbury@blgcanada.com

Counsel for the Respondent

**KRONIS, ROTSZTAIN, MARGLES,
CAPPEL LLP**
Barristers and Solicitors
25 Sheppard Avenue West, Suite 700
Toronto, Ontario M2N 6S6

Mervyn D. Abramowitz
Stephen Wolpert
Tel: (416) 225-8750
Fax: (416) 225-3910
mabramowitz@krmc-law.com
swolpert@krmc-law.com

**Counsel for the Court-Appointed
Receiver/Manager, Mintz & Partners Limited**

LANG MICHENER LLP
Barristers and Solicitors
50 O'Connor Street, Suite 300
Ottawa, Ontario K1P 6L2

Eugene Meehan, Q.C.
Tel: (613) 232-7171
Fax: (613) 231-3191
emeehan@langmichener.ca

Agent for the Applicants

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa, Ontario K1P 1J9

Carole J. Brown
Tel: (613) 237-5160
Fax: (613) 230-8842
cbrown@blgcanada.com

Agent for the Respondent

GOWLING LAFLEUR HENDERSON LLP
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 786-0139
Fax: (613) 563-9869
henry.brown@gowlings.com

**Agent for the Court-Appointed
Receiver/Manager, Mintz & Partners
Limited**

**THE REGIONAL MUNICIPALITY OF
YORK**

Legal Services Branch
Corporate Services Department
17250 Yonge Street, 4th Floor
Newmarket, Ontario L3Y 6Z1

Daniel E. Kuzmyk

Tel: (905) 895-1231 ext. 1301

Fax: (905) 895-3768

dan.kuzmyk@york.ca

Counsel for Housing York Inc.

**I
N
D
E
X**

TABLE OF CONTENTS

Tab

Memorandum of Argument

1

A. BOTH RESPONSES REINFORCE NATIONAL PUBLIC IMPORTANCE ...	1
B. UBIQUITOUSNESS AND IMPORTANCE OF NON-PROFIT HOUSING CO-OPS	1
C. COURTS CANADA-WIDE HAVE SAME SUBSTANTIVE JURISDICTION AS THIS TEST CASE.....	2
D. IMPORTANCE OF COMMERCIAL/NON-COMMERCIAL DISTINCTION..	3
E. OTHER NON-OPPOSED TRANSFERS NOT RELEVANT TO THIS TEST CASE	4
F. NEED FOR NATIONAL GUIDANCE	4
G. EQUITY AN IMPORTANT REALITY ACROSS CANADA.....	4
H. ORDER SOUGHT	5
I. TABLE OF AUTHORITIES.....	6
J. LEGISLATION.....	7
<i>Courts of Justice Act, R.S.O. 1990, c. C.43</i>	7

Additional Reply Authorities

2 *Simcoe (County) v. Matthew Co-operative Housing Inc.*, 2010 ONSC 40478

3 *Bank of Montreal v. Sportsclick Inc.*, 2009 NSSC 354.....11

MEMORANDUM OF ARGUMENT

A. BOTH RESPONSES REINFORCE NATIONAL PUBLIC IMPORTANCE

1. The Applicants submit that the responses of the Respondent, the Regional Municipality of York, (the “Region”) and of the Court-Appointed Receiver/Manager, Mintz & Partners Limited, (the “Receiver/Manager”) (collectively, the “Respondents”) reinforce why this proposed appeal is of national public importance and why leave to appeal ought to be granted.

B. UBIQUITOUSNESS AND IMPORTANCE OF NON-PROFIT HOUSING CO-OPS

2. First, the Application for Leave to Appeal sets out important facts to show why this case has national public importance well beyond just this case, and the Respondents do not deny these key facts. For example:

(a) There are over 2,200 “non-profit housing co-operatives” spread all across Canada, including in every province and territory (as shown in the map entitled “National Importance of this Test Case to Canadians Residing in Co-ops Across Canada”). These co-ops also house a substantial number of individuals and families throughout Canada (i.e. about 245,000 residents/members);

(b) A similar receivership/management remedy to what was used in this case is present across the country in every common-law province and territory (as shown in the map entitled “National Importance of Court-Appointed Receiver/Managers: Country-Wide Legislative Summary”). Proposed sales/transfers by receivers/managers are thus available to be used similarly against such co-ops throughout the country.

(c) Unlike traditional “landlord and tenant” housing, these residents/members have important long-term residency, democratic, and self-management rights, which would be lost if sales/transfers as proposed by the Receiver/Manager in this case are allowed to proceed (which are applicable to non-profit housing co-operatives across the country);

(d) These non-profit housing co-operatives have a very significant total value in the order of seven billion dollars. Legal requirements normally compel that the net equity

for such co-ops be given to other non-profit housing co-operatives or charities if a co-op dissolves and ceases to exist. However, this would not occur if sales/transfers as proposed by the Receiver/Manager in this case are allowed to proceed given that the proposed consideration is only taking over the outstanding loans instead of the full market value of the co-op.

Ref: Affidavit of Dale Reagan at paras. 6, 9, 11, 13-15 [Application for Leave to Appeal (“Leave Application”), Tab 2]

See also “National Importance of this Test Case to Canadians Residing in Co-ops Across Canada” and “National Importance of Court-Appointed Receiver/Managers: Country-Wide Legislative Summary” [Leave Application, Tab 2-B]

C. COURTS CANADA-WIDE HAVE SAME SUBSTANTIVE JURISDICTION AS THIS TEST CASE

3. Second, courts across the country have the same substantive jurisdiction to apply the same remedy at issue in this case (i.e. a proposed sale/transfer by receiver/manager appointed by the Court to address management issues instead of recovering a debt). The Respondents explicitly concede that the Receiver/Manager was appointed pursuant to s. 101 of the *Courts of Justice Act*, which has an equivalent in every common-law province and territory in Canada. Lauwers J. also explicitly found in *Simcoe (County) v. Matthew Co-operative Housing Inc.* that the Court had jurisdiction under this section to consider a similar proposed sale/transfer by a receiver/manager, and His Honour’s reasoning is applicable across Canada.

Ref: Region’s Memorandum of Argument at para. 6 [Response of the Respondent, the Regional Municipality of York to the Application for Leave to Appeal (“Region’s Response”), Tab 1]

Receiver/Manager’s Memorandum of Argument at para. 6 [Response to Application for Leave to Appeal of the Receiver/Manager (“Receiver/Manager’s Response”), Tab 1]

“National Importance of Court-Appointed Receiver/Managers: Country-Wide Legislative Summary” [Leave Application, Tab 2-B]

Simcoe (County) v. Matthew Co-operative Housing Inc., 2010 ONSC 4047 at para. 108 [Reply for Leave to Appeal, Tab 2]

D. IMPORTANCE OF COMMERCIAL/NON-COMMERCIAL DISTINCTION

4. Third, a fundamental question in this case arises from the commercial/non-commercial distinction, which exists throughout Canada in similar situations. The question is whether the principles for approving a sale in order to recover a substantial outstanding commercial debt should be used, even when a receiver/manager is appointed to deal instead with *management* issues in a *government-assisted non-profit* housing co-operative. In other words, what guiding principles for Canada should apply when the receiver/manager was not appointed to recover an outstanding commercial debt, yet the receiver/manager recommends a sale that would instead effectively end the co-op and its non-profit mission rather than return control and management to the co-op?

5. Contrary to the Respondents' suggestion, this issue is not simply the general principles for reviewing a proposed sale by a Court-appointed receiver/manager. Such a characterization ignores the fundamental distinctions and questions here. Further, the cases cited by the Respondents to support this suggestion are all situations where the assets are being sold to *recover substantial debts* in a commercial setting; they are not situations where the receiver/manager was appointed to deal with previous management issues in a non-profit setting. The Respondents thus do not properly address this important difference and question, which is applicable to any receivership/management across Canada that is appointed to deal with management issues instead of debt recovery.

Ref: *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) (QL) at para. 14 [Leave Application, Tab 10]

Regal Constellation Hotel Ltd. (Re) (2004), 71 O.R. (3d) 355 (C.A.) (QL) at para. 7 [Leave Application Tab 13]

British Columbia v. A & A Estates Ltd. (1999), 71 B.C.L.R. (3d) 92 (S.C.) (QL) at headnote [Receiver/Manager's Response, Tab 4]

River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa (2010), 469 A.R. 333, 2010 ABCA 16 at headnote [Receiver/Manager's Response, Tab 5]

Bank of Montreal v. Sportsclick Inc., 2009 NSSC 354 at para. 2 [Reply for Leave to Appeal, Tab 3]

E. OTHER NON-OPPOSED TRANSFERS NOT RELEVANT TO THIS TEST CASE

6. Fourth, the fact that Courts have, in the past, in a few cases approved motions by a receiver/manager for sales/transfers of non-co-ops in a social housing context is not helpful for determining whether leave to appeal ought to be granted here because those cases were unopposed. Unopposed orders in other cases involving different parties should not play a role in determining the merits of a different and contested case. Further, non-profit housing *co-operatives* are a distinctly different form of government-assisted housing that provides residents with important democratic management rights and long-term residency rights. The cited orders instead involve ordinary “landlord and tenant housing” or “top-down” administered (instead of resident administered) government housing, which does not involve such important rights. Such uncontested orders should thus not be relied upon to deny leave to appeal here.

Ref: *Canada Mortgage and Housing Corporation v. Village Lifestyles Non-Profit Homes Inc.* (15 December 2005), Toronto – Commercial List B174/91 (Ont. S.C.J.) at “ON READING” clause [Region’s Response, Tab 3-A]

Ontario v. Shehrazad Non Profit Housing Inc. (13 April 2010), Toronto – Commercial List 06-CL-6307 at “ON READING” clause [Region’s Response, Tab 3-B]

Affidavit of Dale Reagan at para. 6 [Leave Application, Tab 2]

F. NEED FOR NATIONAL GUIDANCE

7. Fifth, the lack of case law on these issues (conflicting or otherwise) illustrates the novel areas and points of law associated with this proposed appeal, which reinforces the proposed appeal’s national public importance. Contrary to the suggestion of the Respondents, this lack of precedents does not indicate that these issues are not of national public importance. All parties have put forward relatively limited case law, which indicates the novel nature of this proposed appeal (otherwise, case law would be present).

G. EQUITY AN IMPORTANT REALITY ACROSS CANADA

8. Sixth and finally, whether the substantial net equity in the co-op in this case was properly characterized as “phantom equity” or not would have played a significant role in whether the proposed sale/transfer would have been approved (contrary to the assertions of the

Receiver/Manager). The Receiver/Manager concedes that, if the equity was not “phantom equity”, then “certain funds representing that ‘equity’ would have been paid to a charity or other co-operative corporation.” This principle is applicable throughout all of Canada, which reinforces the national public importance of this issue.

Ref: Receiver/Manager’s Memorandum of Argument at para. 42 [Receiver/Manager’s Response, Tab 1]

9. Since other co-ops and charities are legally entitled to this substantial net equity (which was \$5.6 million in this case in 2005), the Court would have required a substantially higher price than the proposed consideration. Otherwise, such sales/transfers occur at far below the co-op’s proper value, to the detriment of the entities otherwise entitled to the proceeds.

Ref: Endorsement of the Honourable Mr. Justice Morawetz at para. 58 [Leave Application, Tab 4]


10. Further, whether the net equity is or is not “phantom equity” is important if the Court is to properly and fairly assess whether that equity could have been used to fund long-term repairs if the Region was not prepared to provide that funding. If so, it would have removed a considerable hurdle to returning management and control to the co-op (and thus also preserving the residents/members’ existing and important democratic, management, and residency rights).

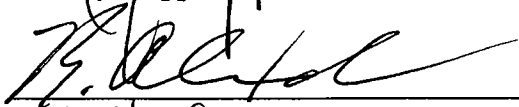
H. ORDER SOUGHT

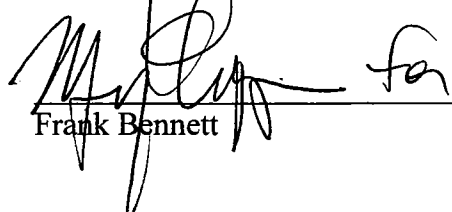
11. The Applicants thus continue to seek that leave to appeal be granted with costs.

All of which is respectfully submitted this 8th day of October, 2010.

SIGNED BY:


Murray Klippenstein


Basil Alexander


Frank Bennett

I. TABLE OF AUTHORITIES

<i>Bank of Montreal v. Sportsclick Inc.</i> , 2009 NSSC 354.....	para. 5
<i>British Columbia v. A & A Estates Ltd.</i> (1999), 71 B.C.L.R. (3d) 92	para. 5
<i>Canada Mortgage and Housing Corporation v. Village Lifestyles Non-Profit Homes Inc.</i> (15 December 2005), Toronto – Commercial List B174/91 (Ont. S.C.J.).....	para. 6
<i>Ontario v. Shehrazad Non Profit Housing Inc.</i> (13 April 2010), Toronto – Commercial List 06-CL-6307	para. 6
<i>Regal Constellation Hotel Ltd. (Re)</i> (2004), 71 O.R. (3d) 355 (C.A.) (QL)	para. 5
<i>River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa</i> (2010), 469 A.R. 333, 2010 ABCA 16	para. 5
<i>Royal Bank of Canada v. Soundair Corp.</i> (1991), 4 O.R. (3d) 1 (C.A.) (QL)	para. 5
<i>Simcoe (County) v. Matthew Co-operative Housing Inc.</i> , 2010 ONSC 4047	para. 3(b)

J. LEGISLATION

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101.(1)In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2)An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Case Name:

Simcoe (County) v. Matthew Co-operative Housing Inc.

Between

**The Corporation of the County of Simcoe, Applicant, and
Matthew Co-operative Housing Inc., Respondent**

And between

**Matthew Co-operative Housing Inc., Applicant, and
The Corporation of the County of Simcoe, Respondent, and
The Co-operative Housing Federation of Canada, Intervener**
**APPLICATION UNDER section 120(9) of the Social Housing Reform
Act, 2000, section 101 of the Courts of Justice Act and Rules
14.05(2) and (3) (h) of the Rules of Civil Procedure**

[2010] O.J. No. 3087

2010 ONSC 4047

Court File Nos. CV-07-0319, CV-10-0139

Ontario Superior Court of Justice

P. Lauwers J.

Heard: April 15-16, 2010.

Judgment: July 15, 2010.

(132 paras.)

Creditors and debtors law -- Receivers -- Court appointed receivers -- Sales by receiver -- Application by respondent housing co-operative for judicial review of County's consent to transfer respondent's assets to county housing corporation allowed -- Motion by receiver of respondent for authorization to transfer respondent's assets to county housing corporation dismissed -- County appointed receiver and consented to sale of respondent's assets -- County did not meet duty of fairness -- County failed to provide opportunity for meaningful consultation -- Sale was not valid since consent was not valid -- Receiver and County did not establish that respondent was incapable of resuming governance.

Government law -- Government assistance projects -- Social services and programs -- Housing -- Subsidized housing -- Appeals and judicial review -- Amendment or rescinding of decision -- Appli-

ation by respondent housing co-operative for judicial review of County's consent to transfer respondent's assets to county housing corporation allowed -- Motion by receiver of respondent for authorization to transfer respondent's assets to county housing corporation dismissed -- County appointed receiver and consented to sale of respondent's assets -- County did not meet duty of fairness -- County failed to provide opportunity for meaningful consultation -- Sale was not valid since consent was not valid -- Receiver and County did not establish that respondent was incapable of resuming governance.

Application by Matthew Co-operative Housing ("Matthew Co-op") for judicial review of the decision of Simcoe County to consent to the transfer of Matthew Co-op's assets to the Simcoe County Housing Corporation ("SCHC"). Motion by the court-appointed receiver of Matthew Co-op seeking authorization to transfer the assets of Matthew Co-op to SCHC. Matthew Co-op was a non-profit housing co-operative subsidized by Simcoe County. Simcoe County gave notice to Matthew Co-op that it had failed to operate the housing project properly and subsequently appointed a receiver, whose appointment was extended by court order. The receiver and Simcoe County approved the sale of Matthew Co-op's assets.

HELD: Application by Matthew Co-op allowed; motion by receiver dismissed. The decision to consent to the transfer of Matthew Co-op's assets to SCHC was quashed. Simcoe County did not meet its duty of fairness to the members of Matthew Co-op. It failed to provide the members with any meaningful consultation in its decision to consent to the sale of assets. The valid consent of Simcoe County was a condition precedent of the sale of Matthew Co-op's assets. The sale was therefore not valid and had not been approved. The order appointing the receiver did not expressly authorize the sale of Matthew Co-op's assets, but the court had jurisdiction to consider the receiver's recommendations for the sale. The receiver and Simcoe County did not establish that Matthew Co-op was incapable of resuming governance with appropriate training and mentoring.

Statutes, Regulations and Rules Cited:

Co-Operative Corporations Act, R.S.O. 1990, c. C.35,

Courts of Justice Act, R.S.O. 1990, c. C.43, s. 101

Judicial Review Procedure Act, R.S.O. 1990, c. J.1, s. 6(2)

Municipal Act, 2001, S.O. 2001, c. 25, s. 239(2)

Regulation 268/01, s. 18

Residential Tenancies Act, 2006, S.O. 2006, c. 17,

Rules of Civil Procedure, Rule 14.05(2), Rule 14.05(3)(h)

Social Housing Reform Act, 2000, S.O. 2000, c. 27, s. 1, s. 95, s. 95(1), s. 115(1), s. 116, s. 116(1)5, s. 116(1)6, s. 117(1) (a), s. 120(2), s. 120(4), s. 120(5), s. 120(9), s. 156

Counsel:

Douglas O. Smith and Robert L. Bigioni, for the Applicant.

Mervyn D. Abramowitz and L. Viet Nguyen for Mintz & Partners Limited, Receiver, Moving Party.

Lucas D. Lung and Kathleen Clements for Matthew Co-Operative Housing Inc.

Frank Bennett, Murray Klippenstein, and Basil Alexander, for Co-Operative Housing Federation of Canada.

REASONS FOR DECISION

[emphasized text is **bolded**]

...

1. The power to sell

...

The receivership order of Weekes J.

...

107 The Receiver acknowledges the absence of the template sale language in the Matthew Co-Op order but takes comfort in paragraph 5, which provides:

5. This Court orders that the respondent shall be deemed to ratify and confirm whatever the Receiver does in the course of the Receivership, so long as it is done in accordance with the *SHRA*, the regulations to the *SHRA* and the terms of the appointment herein, and the Receiver shall not be required to consult with, obtain approval of or have its actions ratified by the respondent.

This language repeats section 120(5) of the *SHRA* and is also found in the *Thornhill Green* order. The Receiver argues that this provision incorporates by reference the relevant language from the *SHRA* and regulation 18 concerning the power of the Receiver to sell the assets of Matthew Co-Op. But the Receiver acknowledges that the interposition of the order of Weekes J. means that the court's approval is required for the sale.

108 As I said earlier, in the exercise of my jurisdiction under section 101 of the *CJA*, I am not bound by the orders of Weekes J., but I ought to pay them careful heed. Despite the fact that a sale of the assets of Matthew Co-Op was not contemplated by his orders, and is in spirit inconsistent with them, **I find that**, but for my decision on the first motion, **that I would have had jurisdiction under section 101 of the *CJA* to consider the Receiver's recommendations and to make the requested orders.**

2. Did the County and the Receiver pursue the governance issue properly?

109 The heart of the problem in this case is the governance issue. It loomed large in the orders and endorsement of Weekes J., and in the Receiver's reports to the court. The progress of the issue from the Receiver's original appointment by the County to the present affects both the procedural issue related to the fairness of Simcoe County's decision to approve the proposed sale, as noted above, and the substantive issue before me in the Receiver's request for the approval of the sale of the assets of Matthew Co-Op to SCHC.

...

Case Name:

Bank of Montreal v. Sportsclick Inc.

**Between
Bank of Montreal, Plaintiff, and
Sportsclick Inc., Defendant**

[2009] N.S.J. No. 560

2009 NSSC 354

Docket: Hfx 314220

Registry: Halifax

Nova Scotia Supreme Court
Halifax, Nova Scotia

P.J. Duncan J.

Heard: November 10 and 12, 2009.

Oral judgment: November 12, 2009.

Released: November 17, 2009.

(68 paras.)

Bankruptcy and insolvency law -- Administration of estate -- Sale of property -- Administrative officials and appointees -- Receivers -- Motion by receiver of Sportsclick Inc. seeking an order approving the sale of a certain asset, namely shares in Southprint Inc. for the sum of \$25,000, granted -- The receiver's decisions were made in good faith, and they were reasonable having regard to the circumstances in existence at the time -- No alternatives had been shown to exist that would provide the potential for a greater return -- The tender process, once decided upon, was carried out in a transparent and fair manner, consistent with industry standards.

Motion seeking an order approving the sale by the receiver of Sportsclick Inc. of a certain asset, namely shares in Southprint Inc. The application was supported by the intended purchaser, T & A Venture Properties Inc., and opposed by Sportsclick. The receiver recommended approval of the sale for the sum of US \$25,000 as this was the value which presented itself to the receiver when the asset was widely exposed to the market for sale, and after Sportsclick's principals and others were consulted for assistance with marketing the asset. Sportsclick questioned the effort expended in try-

ing to achieve reasonable value for the asset alleging that the receiver acted improvidently, without commercial reasonableness and without regard for the best interests of the shareholders and creditors of Sportsclick.

HELD: Motion granted. The Bank of Montreal, a significant secured creditor of Sportsclick, had accepted it was not worth pumping more money into selling the shares. There was no evidence that any marketing scheme would attract a better price or more interest, and it was speculative to suggest it would. Notwithstanding its capital and real property assets, Southprint was a company that had been in serious financial decline for several years. Southprint could only survive as a going concern with a purchaser that had the financial ability and the will to take on a company now losing almost \$2 million per year on declining sales, has limited creditworthiness, and was largely dependent on the willingness of the existing management team to continue to use their knowledge of the company and its existing business relationships to the benefit of Southprint. The receiver had no mandate to operate Southprint, and the option to close it down and liquidate the assets was not open to it in this case. The receiver's decisions were made in good faith, and they were reasonable having regard to the circumstances in existence at the time. No alternatives had been shown to exist that would provide the potential for a greater return. The tender process, once decided upon, was carried out in a transparent and fair manner, consistent with industry standards.

Statutes, Regulations and Rules Cited:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 47(1)

Counsel:

Stephen Kingston and Benjamin Durnford, for the Plaintiff.

Christopher Robinson, for the Defendant.

Dennis Pickup and Jonathan Saulnier, Articled Clerk, for Third Party T & A Venture Properties Inc.

[emphasized text is bolded]

P.J. DUNCAN J. (orally):--

Introduction

1 This is a motion that seeks an order to approve the sale by the Receiver of Sportsclick Inc. of a certain asset of Sportsclick, being the shares of a company known as Southprint Inc. The application is supported by T & A Venture Properties Inc., the intended purchaser of the asset, who is participating as an interested non party. The motion is opposed by Sportsclick.

Background

2 Upon application of the plaintiff, Bank of Montréal, an order was issued on July 14, 2009 by the Registrar of Bankruptcy appointing Ernst & Young Inc. as the interim Receiver of Sportsclick Inc. and Sun Vette Racing Inc. pursuant to section 47(1) of the *Bankruptcy and Insolvency Act (Canada)*, R.S. 1985, c. B-3.

3 Following appointment the Receiver offered the personal assets of the defendant for sale by tender, excepting the Southprint shares, which the Receiver characterizes as a unique asset.

...