

Ontario

Superior Court of Justice

Commercial List

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

BAYSIDE MALL LIMITED

Respondent

NOTICE OF MOTION

The Receiver, A. John Page & Associates Inc. will make a motion to a Judge sitting on the Commercial List on November 18, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, in substantially the form attached as **Schedule “A”** hereto, including, among other things, an order:
 - a. approving the conduct and activities of the Receiver to date as detailed in the Twelfth Report of the Receiver dated October 29, 2019 (the **“Twelfth Report”**);
 - b. approving the Receiver’s Statement of Receipts and Disbursements to Date (included as Exhibit “J” in the Twelfth Report);

- c. approving the Receiver's Pro Forma Statement of Receipts and Disbursements (included as Exhibit "K" in the Twelfth Report);
 - d. approving the fees and expenses of the Receiver and its counsel;
 - e. approving the estimates for fees and expenses of the Receiver and its counsel to complete this assignment;
 - f. approving the final distribution to the applicant, ICICI Bank Canada ("**ICICI**") on account of the Receiver's Certificates;
 - g. unsealing any and all documents ordered sealed pursuant to any prior Orders made in this proceeding;
 - h. directing the Receiver to deliver to Malik Khalid, the principal of the respondent, 1368883 Ontario Inc. (formerly, Bayside Mall Limited ("**Bayside**")) the books and records provided to the Receiver pursuant to paragraph 5 of the Initial Order (defined below); and
 - i. discharging and releasing the Receiver upon the Receiver filing a discharge certificate with the Court; and
2. such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

3. The Receiver was appointed by Order of the Honourable Mr. Justice Wilton-Siegel on December 5, 2012 (the "**Initial Order**") over all of the assets, undertakings and properties of Bayside;
4. The principal asset of Bayside was a shopping mall and office building located at 150-202 Christina St. North in Sarnia, Ontario (the "**Bayside Mall**") on land (the "**Land**") owned by the City of Sarnia (the "**City**");
5. On August 26, 2015, Mr. Justice Hainey made an order which, among other things, approved the agreement (the "**Wilsondale APS**") to sell the Bayside Mall to

Wilsondale Venture Capital Inc. (“**Wilsondale**”), in trust for a company to be incorporated.

6. The sale of the Bayside Mall closed on October 8, 2015 (the “**Closing**”);
7. In connection with the closing, property tax arrears totalling \$1,308,304.94 were paid to the City and the Receiver received the net sum of \$369,711.44;
8. Previously, the Receiver had filed an appeal of the Bayside Mall MPAC property assessment for the period from January 1, 2013 to December 31, 2016, inclusive (the “**Appeal**”);
9. MPAC assessed the Bayside Mall at \$7,100,000 as at January 1, 2012, with the property taxes levied for the period that was the subject matter of the Appeal being based on that assessment;
10. In order to expedite the resolution of the Appeal, the Receiver and its counsel, along with Altus, MPAC, MTE, the City and the County attended a mediation in Sarnia on April 25, 2016 (the “**Mediation**”) that was chaired by a representative of the ARB;
11. The Receiver and the City reached a settlement (the “**Settlement**”) that saw the assessed value of the property reduced to \$2,500,000 for the years 2013-2015 and \$3,345,000 for the year 2016;
12. On May 30, 2016, council for the City approved the Settlement;
13. On June 16, 2016, Mr. Justice Hailey made an order which, among other things, approved the Settlement;
14. On August 3, 2016, the Receiver received from the City a payment in the amount of \$518,777.46 in connection with the Settlement (the “**Property Tax Refund**”);
15. The Wilsondale APS obligated the Receiver to pay Wilsondale its share of the Property Tax Refund net of costs;

16. The Receiver determined that there was no amount owing as the share of costs exceeded the share of the Property Tax Refund, and informed Wilsondale accordingly;
17. The Receiver also assessed and concluded that no portion of the portion of the Property Tax Refund ought to be paid over to Bayside Mall (2015) Limited and/or any of the tenants or former tenants of the Debtor;
18. The Wilsondale APS provided for post closing adjustments for certain matters that could not be determined at Closing;
19. After delay occasioned by a dispute not involving the Receiver, there are no outstanding issues relating to the sale of the Bayside Mall to Wilsondale;

Statement of Receipts and Disbursements

20. The Receiver's interim Statement of Receipts and Disbursements for the period from December 5, 2012 to October 29, 2019 is attached to the Twelfth Report as Exhibit "J", and the Receiver requests Court approval for that statement;
21. The Receiver's pro forma final Statement of Receipts and Disbursements (that includes the Receiver's estimate for all unpaid disbursements) is attached to the Twelfth Report as Exhibit "K", and the Receiver requests Court approval for that statement;

Professional Fees

22. The Receiver's fees for November 1, 2016 and ending October 28, 2019 are \$78,521.87 plus HST, as set out in the Fee Affidavit of A. John Page sworn October 30, 2019;
23. The fees of Heath Whiteley for November 1, 2016 and ending October 28, 2019 are \$20,480.00 plus disbursements of \$262.72, plus HST, as set out in the Fee Affidavit of Heath Whiteley sworn November 7, 2019;
24. The foregoing fee affidavits also estimate the fees and expenses to complete the receivership (jointly, the "**Fee Estimates**");

25. The Receiver is asking the court to approve the above fees and expenses of the Receiver and its counsel, along with the Fee Estimates;

Final Distribution

26. The Receiver borrowed \$1,000,000 from the Bank through the issuance of Receiver's Certificates in accordance with the Initial Order;
27. To date, the Receiver has repaid \$800,000;
28. The Receiver is asking the court to authorize the Receiver paying over the net funds remaining on hand (estimated to be \$131,161.17) to the Bank in partial but final repayment of the Receiver's Certificates;

Unsealing of Documents

29. During the course of the receivership there have been several orders providing for the sealing of various confidential documents;
30. Consequently, the Receiver is asking the court to provide for the unsealing of any and all documents ordered sealed previously;

Books and Records

31. At the commencement of the receivership, the Receiver took possession of approximately 24 boxes of records (the "**Records**") pertaining to the operations of Bayside from its related property manager SAMAK Management & Construction Inc. ("**SAMAK**");
32. As the principal of Bayside and SAMAK (namely, Malik Khalid) has informed the Receiver that he wishes to take back possession of the Records, the Receiver is asking the court to authorize the return of the Records to Mr. Khalid;

Discharge of the Receiver

33. In order to complete the receivership, the following tasks need to be undertaken:
 - a. pay any unpaid professional fees and settle any outstanding expenses;

- b. file a final HST return;
 - c. deliver the Records to Malik Khalid
 - d. organize and effect the final payment to the Bank on account of the Receiver's Certificates;
 - e. close the Receiver's bank accounts;
 - f. prepare the actual final Statement of Receipts and Disbursements (the "**Actual Final R&D**"); and
 - g. prepare and issue the Final Report of the Receiver in accordance with the requirements of the BIA;
34. The Receiver is asking the court to discharge the Receiver upon the filing of a Certificate of Completion attesting to the completion of the tasks listed in paragraph • above and attaching the Actual Final R&D; and
35. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- 36. The Twelfth Report;
- 37. The fee affidavits of A. John Page and Heath Whiteley; and
- 38. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 7, 2019

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B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

BAYSIDE MALL LIMITED
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(returnable November 18, 2019)

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