SUPREME COURT OF NOVA SCOTIA

Citation: Trez Capital Corporation v. UC Investments Inc., 2013 NSSC 381

Date: 20131129
Docket: Hfx. No. 421567
Registry: Halifax

Between:

Trez Capital Corporation, Trez Capital Limited Partnership, TCC Mortgage Holdings inc., Computershare Trust Company of Canada and WBLI, Inc.

Applicants

v.

UC Investments Inc., Edge Marketing Inc., 3214113 Nova Scotia Limited and PricewaterhouseCoopers Inc.

Respondents

Judge:	The Honourable Justice Arthur W.D. Pickup
Heard:	November 20, 2013, in Halifax, Nova Scotia
Written Decision:	November 29, 2013
Counsel:	Jeffrey R. Hunt and Joel Henderson, for the Applicants Robert G. MacKeigan, Q.C., and Sheree L. Conlon, for UC Investments Inc., Edge Marketing Inc., 3214113 Nova Scotia Limited Joshua J. Santimaw, for Harbour Edge Mortgage Investment Corporation Tim Hill, for Green-Starlight GP Limited Josh J.B. McElman and Gavin D.F. MacDonald, for BMO D. Bruce Clarke, Q.C., for PricewaterhouseCoopers Inc. Adam D. Crane, for First National GP Corporation Diane P. Rowe, for Housing Nova Scotia

By the Court: **Orally**

[1] This is an application by Trez Capital Corporation, Trez Capital Limited Partnership, TCC Mortgage Holdings Inc., Computershare Trust Company of Canada and WBLI, Inc., seeking the following remedies:

i. a declaration that the Lender's appointment of the Receiver pursuant to two appointment letters dated October 28, 2013 is not stayed pursuant to section 69(1) of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3 (the "*Act"*)'

ii. an order for directions requiring the Borrowers to account for and pay to the Receiver all rents received from the Properties after October 28, 2013;

or in the alternative,

iii. an order that PricewaterhouseCoopers Inc. (The "Trustee") be appointed as interim receiver of the Properties pursuant to s. 47.1 of the *Act*; and

iv. an order directing the Trustee to preserve all rents received from the Properties.

[2] Submissions were received from the applicants and the respondents, and from Green-Starlight LP, a Second Mortgage Lender. Counsel for PricewaterhouseCoopers Inc. also made submissions. Several other security holders attended by counsel, some of whom had first mortgage security on some of the properties involved in this application. Apparently, they received no formal notice of this proceeding.

[3] Counsel for PricewaterhouseCoopers Inc. argues that they should not be named as a respondent in this proceeding. Counsel for the applicants did not take exception to counsel's argument and, as a result, for purposes of my decision when I refer to "respondents" in this decision, this does not include PricewaterhouseCoopers Inc.

Background facts

[4] Between December 7, 2011 and February 6, 2013 the respondents agreed to borrow funds totalling $63,788,217 from the applicants.

[5] The respondents are the registered owner of property which contains large residential apartment buildings in Nova Scotia and New Brunswick. As security for the loans, the respondents, along with guarantors, granted security to the applicants including mortgages and general assignment of rents and leases.

[6] It became apparent at the hearing that there were other secured lenders who had not been notified of the proceeding. For example, BMO, by way of affidavit, sets out its first ranking security interest in certain properties of the respondents. Despite having this first mortgage security, BMO was not notified of the proceeding, although the applicants sought remedies which would affect their security and, in particular, have rents diverted to a receiver.

[7] Green-Starlight GP Ltd. is the general partner of Green-Starlight LP (the "Second Mortgage Lender"). The Second Mortgage Lender sold the property to the respondents and, at the time, took back a second mortgage in the original amount of $8,000,000. As of October 17, 2013 the amount due to the Second Mortgage Lender was $7,276,218.74, including principal interest and costs.

[8] The terms and conditions of the loans between the applicants and respondents were set out in various commitment letters which are attached as Exhibit 7 through 14 of the affidavit of Paul Bowers.

[9] The respondents have defaulted on the loans by failing to make the necessary interest payments for the months of August and September, 2013, due September 7, 2013 and October 7, 2013, respectively, in the amount of $570,113.73.

[10] Following the default, the applicants and respondents engaged in discussions which caused the applicants to determine the respondents were not able to meet their obligations under the loans. The applicants lost confidence in the respondents and allege that the respondents may be directing the monthly rents away from their intended purpose of paying the respondents' financial obligations to the applicants.

[11] On October 16, 2013 at 6:21 pm (approximately), the applicants sent a Notice of Intention to Enforce Security under the *Bankruptcy and Insolvency Act* by email to the respondents. This notice was also sent to the respondents by courier on October 16, 2013 and was received on October 17, 2013.

[12] According to the respondents, they and the applicants entered into negotiations over the potential terms of a Forbearance Agreement that would avoid the need for the respondents to file a Notice of Intention to File a Proposal pursuant to s. 50.4 of the *BIA*. They say these negotiations took place up to and including October 27, 2013. As the parties were unable to reach an agreement on the terms of the Forbearance Agreement, the respondents filed the Notice of Intention to File a Proposal with the Superintendent of Bankruptcy.

[13] According to the respondents at no point prior to October 28, 2013 did the applicants or their counsel advise they considered the deadline for the companies to file a Notice of Intention to File a Proposal to have expired on Saturday, October 26, 2013.

[14] Despite these negotiations, the applicants maintain the 10 day notice period provided for by s. 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("BIA") expired at midnight October 26, 2013. The applicants rely on the email of their Notice of Intention to Enforce Security on October 16, 2013, which was transmitted at approximately 6:21 pm on that date.

[15] On Monday, October 28, 2013 the applicants appointed WBLI Inc. as receiver over the security. WBLI Inc. immediately contacted the respondents to obtain their cooperation to proceed with the receivership. WBLI received correspondence from counsel for the respondents advising that notices of intention to file a proposal would be filed by days' end, and that no steps should be taken to enforce security.

[16] Subsequently, each respondent filed a "Notice of Intention to File a Proposal" pursuant to s. 50.4 of the *BIA*, naming PricewaterhouseCoopers Inc., ("PwC") as trustee on Monday, October 28, 2013.

[17] The Second Mortgage Lender joins in this application to support the applicants' position and indicates by affidavit that the Second Mortgage Lender

sent a Notice of Intention to Enforce Security to the respondents on October 17, 2013.

Issues

[18] The issues to be determined are as follows:

i. Did the borrowers' Notice of Intention to File a Proposal operate to stay the lenders enforcement of its security and the appointment of WBLI Inc. as receiver?

   a) Was the Notice of Intention to Enforce Security served in the appropriate manner?

   b) When did the 10 day notice period for the Notice of Intention to Enforce Security expire?

ii. In the alternative, is an interim receiver necessary to protect the interest of the applicants or of creditors generally?

i. Did the borrowers' Notice of Intention to File a Proposal operate to stay the lenders' enforcement of its security and the appointment of WBLI Inc. as receiver?

a) Was the Notice of Intention to Enforce Security served in the appropriate manner?

Applicants' Argument

[19] Sub-section 244(1) of the *Bankruptcy and Insolvency Act* is as follows:

> 244. (1) A secured creditor who intends to enforce a security on all or substantially all of
>
> (a) the inventory,
>
> (b) the accounts receivable, or

> (c) the other property
>
> of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person **shall send to that insolvent person**, in the prescribed form and manner, a notice of that intention.
>
> (2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required **until the expiry of ten days after sending that notice**, unless the insolvent person consents to an earlier enforcement of the security.
>
> [emphasis added]

[20] The applicants acknowledge that s. 244 of the *BIA* requires that a Notice of Intention to Enforce Security be sent 10 days prior to enforcing its security in respect of which the notice is required.

[21] Notice was provided by the applicants by email and courier.

[22] First, dealing with the email notice, Rule 124 of the *Bankruptcy and Insolvency General Rules* (C.R.C., c. 368), states:

> 124. The notice of intention to enforce a security pursuant to subsection 244(1) of the *Act* shall be in prescribed form and shall be served, or sent by registered mail or courier, or, **if agreed to by the parties, by electronic transmission**.
>
> [emphasis added]

[23] The applicants argue that, as lenders, they had provided a commitment letter which was signed by the respondents that contained a provision allowing the notice to be sent by email and, as a result, the parties agreed to email service as provided for in Rule 124 of the *Bankruptcy and Insolvency General Rules.* This provision allegedly allowing notice to be sent by email was contained in each loan commitment letter. For example, the Herring Cove Loan commitment letter between Trez Capital Corporation and Edge Marketing December 7, 2011 is attached to the affidavit of Paul Bowers at Tab 7. It states:

> 42 Communication

> **All communications provided for hereunder shall be in writing, personally delivered, or sent by prepaid first class mail or telecommunications,** and if to the Lender addressed to the address above noted, to the attention of the President, and if to the Borrower to the addressed [sic] noted above. The date of receipt of any such communication should be deemed to the date of delivery, if delivered as aforesaid, or on the third business day following the date of mailing, as aforesaid. Any party hereto may change its address for service from time to time by notice in the manner herein provided. In the event of a postal disruption or an anticipated postal disruption, prepaid first class mail will not be an acceptable means of communication.
>
> [emphasis added]

[24] The question is whether the email sent by the applicants on October 16, 2013 containing the Notice of Intention to Enforce Security is a "telecommunication" and a form of notice "agreed to by the parties". The applicants argue this provision in the commitment letter evidenced such agreement.

[25] The applicants also sent a notice by courier on October 16, 2013 as permitted by Rule 124 of the *Bankruptcy and Insolvency General Rules.* This couriered notice was received by the borrowers on October 17.

Respondents' Position

[26] The respondents say that the parties did not agree to electronic communication of the s. 244 notice. They submit that para. 42 of the various commitment letters refers to notice provisions in the commitment letters and cannot be expanded to cover the notice provisions under the *BIA*.

[27] For the reasons which follow, I substantially agree with the respondents' position.

Analysis

[28] The parties must agree that email delivery is appropriate service under s. 244(1) of the *BIA*. Section 124 of the *Bankruptcy and Insolvency General Rule* states:

> The notice of intention to enforce security pursuant to subsection 244(1) of the *Act* shall be in the prescribed form and shall be served, or sent by registered mail or courier, **or, if agreed to by the parties, by electronic transmission.**
>
> [emphasis added]

[29] Therefore, notice under s. 244 can only be served by personal service or by registered mail or courier service, unless the parties agree to email service.

[30] Did the parties agree to service of the s. 244 notice by email?

[31] The applicants rely on para. 42 of the commitment letters documenting each loan. As quoted earlier, para. 42 reads in part as follows:

> 42. All communications **provided for <u>hereunder</u>** shall be in writing, personally delivered or sent by prepaid first class mail or **telecommunications,**...
>
> [emphasis added]

[32] Notice pursuant to the *BIA* is not specifically provided for in the commitment letters. In fact, there is no reference at all to the *BIA* or any other statutory provisions.

[33] Paragraph 42 refers to communications "provided for hereunder". I agree with the respondents that reference to "communication provided for hereunder" would be a reference to notice provisions contained in the commitment letter. For example, para. 22 of the commitment letter is as follows:

> All property tax payments, utilities and like amounts due and owing in relation to the Subject Property, or any other taxes charged against the Subject Property, shall be paid prior to or coincide with the Advance (as hereinafter defined). The Borrower shall make arrangements to have the taxes paid by monthly installments to the appropriate taxing authority in order to have them paid in full on their due date. The Borrower is to provide evidence of same to the Lender on a quarterly basis.
>
> In the Event of Default (as hereinafter defined) under the Mortgage Security, the Lender shall have the right to require the establishment of a tax reserve by way of

> monthly payments representing 1/12 of the estimated taxes payable. The Lender shall not be responsible for the payment of any tax arrears.

[34] Under this provision, the borrowers are required to provide evidence of payment of property taxes on a quarterly basis. I am satisfied that notice under para. 22 permits notice by telecommunication, as it is communication "provided for hereunder" as provided for in para. 42. A further example of "communication provided for hereunder" where notice can be given by telecommunication is clause 25. This clause requires five business days notice of funding. Again, this notice could be by telecommunication pursuant to para. 42.

[35] A plain common sense reading of para. 42 would suggest that this paragraph provides for nothing more than a telecommunication form of notice pursuant to provisions contained in the commitment letter requiring notice.

[36] Consistent with this interpretation is para. 49(f) of the commitment letter which states:

> Interpretation
>
> (f) The words "hereto", "herein", "hereunder", "hereby", "Commitment Letter, "this agreement", and similar expressions used in this Commitment Letter, including the schedules attached hereto, mean or refer to this Commitment Letter and not to any particular provision, section or paragraph or other portion of this Commitment Letter and include any instruments supplemental or ancillary hereto.
>
> [emphasis added]

[37] Further, at para. 42 after stating "All communications provided for hereunder shall be in writing, personally delivered, or sent by pre-paid first class mail or telecommunications...," goes on to state "...and if to the lender addressed to the address above noted, to the attention of the President, and if to the Borrower to the addressed [sic] noted above..." Both of these addresses are provided for in the commitment letters. There is no reference to an email address which would suggest that email notice was not contemplated under the commitment letter.

[38] I am satisfied that the parties did not agree to email service pursuant to the *BIA* and, therefore, the email sent by the applicants on October 16, 2013 was not proper service.

[39] As a result, the only effective notice was served by courier on October 17, 2013. The 10 day period began to run after the s. 244 notice was served on October 17, 2013. It is not disputed that the 10 day notice period expired on Sunday, October 27, 2013. Sunday being defined as a holiday under s. 35 of the *Federal Interpretation Act*, R.S.C. 1985, C. I-21, the respondents, therefore, had until Monday, October 28, 2013, to file a Notice of Intention to File a Proposal, which they did on that date.

[40] The respondents having filed their Notice of Intention to File a Proposal within the appropriate time, the applicants' motion for a stay of the lender's appointment of the receiver pursuant to two appointment letters dated October 28, 2013 is hereby dismissed.

[41] In the event I am wrong and the effect of para. 42 of the commitment letter is to allow service by email pursuant to the *BIA,* the question is whether the word "telecommunication" referred to in para. 42 refers to email. The respondents argue in the alternative that even if email notice is permitted under the *BIA*, the reference to telecommunication in para. 42 of the commitment letter does not refer to email.

[42] Is an email a "telecommunication"?

[43] The *Federal Interpretation Act* defines "telecommunications" at s. 35 as:

> ...the emission, transmission or reception of signs, signals, writing, images, sounds or intelligence of any nature by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system;

[44] The applicants submit that email is a "telecommunication" and that the parties clearly intended for communications between them with regard to each of the loans to be facilitated by different means, including telecommunications.

[45] Despite the applicants' argument, no email addresses were provided for the parties. If email communication was contemplated, then it would seem likely that email addresses would be provided.

[46] The respondents' argument is that even if the para. 42 contemplates email service of the s. 244 notice under the *BIA*, the term "telecommunication", is not specific enough to refer to email.

[47] Upon reviewing the commitment letters, I note that in a separate clause, dealing with execution of the commitment letter, the parties explicitly contemplated delivery by electronic transmission. In para. 51:

> This agreement may be executed in any number of counterparts and by facsimile, **electronic transmission** or pdf copy, each of which when so executed is deemed to be an original and all of which together shall constitute one and the same agreement.
>
> [emphasis added]

[48] I am satisfied that the parties to the commitment letters intended that the execution of the agreements themselves could be done by way of electronic transmission, but must have intended something different when they used the term "telecommunication" in para. 42.

[49] I also agree with respondents' submission that the applicants own conduct is consistent with the respondents' interpretation. For example, if the applicants considered service of the s. 244 notice to effected on October 16, 2013 (by email), it is inconsistent that they did not state the 10 day deadline to be October 26, 2013, rather than October 28, 2013.

[50] The applicants not having met their burden of proving that "telecommunication" in para. 42 of the commitment letter includes email, I dismiss the application before me for a stay on that basis as well.

[51] In summary, I would dismiss the application on the following grounds:

i. That para. 42 of the various commitment letters does not extend to notice under the *BIA*, but rather refers to internal notice under the commitment letter.

ii. In the alternative, even if para. 42 constitutes agreement between the parties as to email service under s. 244 of the *BIA*, I am not satisfied that the term "telecommunication" would include email.

ii. In the alternative, is an interim receiver necessary to protect the interest of the lenders or of creditors generally?

Applicants' Position

[52] The applicants argue in the alternative that an interim receiver should be appointed to protect the interests of the applicant lenders and of creditors generally. They initially sought the appointment of PricewaterhouseCoopers Inc., but it is clear from the filed documentation that PricewaterhouseCoopers Inc. do not consent to act. Therefore, during the hearing the applicants proposed that WBLI should be appointed as interim receivers.

[53] The applicants submit that it is necessary for the protection of the interests of the applicants and of the respondents' creditors generally that an interim receiver be appointed pursuant to 47.1(1)(a) of the *BIA*. They say the monthly income from the properties is approximately $890,000, yet they have not received the required interest payments from the borrowers in over three months. Moreover, they say the borrowers have permitted other obligations such as utilities, heating oil, property tax and necessary maintenance to be neglected.

[54] Despite the applicants' argument that the appointment of a receiver is necessary for the protection of creditors generally, it is apparent from the appearances at the hearing of this matter that some secured creditors were not advised of the hearing.

[55] The applicants say there is evidence that the substantial rental income of the respondents is not being applied to even the most elementary of obligations. They say they have lost all confidence in the borrowers to conduct their business affairs. In these circumstances, they say, an interim receiver is necessary to protect the interests of not only the lenders, but of other secured and unsecured creditors as well.

[56] Section 47.1 of the *BIA* reads:

> Appointment of interim receiver
>
> 47.1 (1) If a notice of intention has been filed under section 50.4 or a proposal has been filed under subsection 62(1), the court may at any time after the filing, subject to subsection (3), appoint as interim receiver of all or any part of the debtor's property,
>
> (a) the trustee under the notice of intention or proposal;
>
> ...
>
> When appointment may be made
>
> (3) An appointment of an interim receiver may be made under subsection **(1) only if it is shown to the court to be necessary for the protection of**
>
> (a) the debtor's estate; or
>
> (b) the interests of one or more creditors, or of the creditors generally.
>
> [emphasis added]

[57] The burden under s. 47.1(3)of the *BIA* is on the applicants to show that the appointment is necessary to either protect the respondents' estate or to protect the interests of one or more creditors, or of creditors generally.

[58] The Second Mortgage Lender joins the applicants in submitting that the appointment of an interim receiver would be in the interests of creditors. They point out that to date $890,000 stands to be collected by the respondents in rent, without the creditors having any idea what is happening to those funds. The amount of $890,000 is collected each month.

[59] The Second Mortgage Lender also refers to case law to support its position. They provide at p. 12 of their brief:

> *Royal Bank of Canada v. Zutphen Brothers Construction Ltd.,* [1993] N.S.J. No. 640, 17 C.B.R. (3d) 314 (Registrar) was a very early case dealing with the appointment of an interim receiver following the filing of a Notice of Intention to Make a Proposal. In that case Registrar Smith remarked:

> 20 It is well established law, that in order to support an application for the appointment of an interim receiver, the danger of dissipation of assets must be actual and immediate and not one based on suspicion and speculation.

[60] *Zutphen,* was followed in *Re*: *Atsana Semiconductor Corp.*, 2005 CarswellOnt 3304 (S.C.):

> 3. Atsana opposes the Applicant's motion on the grounds that (1) the appointment of an interim receiver would be redundant in that KMPG [sic] has already been identified as the proposal trustee in Atsana's Notice of Intention; (2) there are existing safeguards under the *BIA* following the filing of a Notice of Intention to Make a Proposal to adequately protect the Applicant and other creditors; (3) the disclosure of more specific information about the potential sale transaction to the Applicant and other creditors at this time could irreparably hurt the integrity of the sale of the negotiations to the detriment of Atsana and its creditors; and (4) the Applicant is not coming to court with clean hands and should therefore not be granted equitable relief.

[61] The court applied the test set out in *Zutphen, supra,* and commented as follows on the burden the Applicant must meet under s. 47.1:

> 18 The word "dissipate" implies something more than a sale. In regard to money or property, "dissipate" means to squander, fritter away or waste. It implies that after the dissipating event, there will be less available than there was before; in other words, there will not be a transfer of one form of value for another of equal worth - there will be a reduction in value at the end of the day. There is no evidence before me that the proposed sale will involve a dissipation of Atsana's assets.
>
> 19 ...As has been noted above, suspicion and speculation are inadequate reasons to justify the granting of an extraordinary remedy such as the appointment of an interim receiver.
>
> 20 There are other reasons why the appointment of an interim receiver must fail. First, such an appointment, in the present circumstances, would be largely redundant and therefore would entail an unnecessary expense. There is already a proposal trustee who will be maintaining a close eye on the management of Atsana's assets and on any proposed sale of those assets.

> 21 No sale shall occur without the support of the proposal trustee and the approval of the court. Creditors will have the opportunity to challenge any proposed sale that would be prejudicial to their interests.
>
> 22 It would not be beneficial to Atsana's creditors if money were diverted to fund the appointment of an interim receiver, when one is not necessary to protect the creditors' valid interests.

[62] The court concluded there was no evidence the assets would be dissipated and the applicant had failed to prove an interim receiver was necessary and the motion was dismissed.

[63] PricewaterhouseCoopers Inc. has not consented to be an interim receiver and, in fact, considers such an appointment to be redundant given its role as proposed trustee and cites the expense of being so appointed, the practical result of which is that there will be less money for creditors.

[64] The applicants support their motion to appoint an interim receiver by affidavit evidence found at paras. 15 - 17 of the Bower affidavit and argue that the companies were behind on their payment to unsecured creditors and some of the properties' maintenance.

Analysis

[65] There should be no surprise that in an insolvency case such as this one, the respondent companies owed money to unsecured creditors and missed two interest payments. I agree with the respondents that if this was enough to satisfy the burden on the applicants, virtually every insolvency case would require the appointment of an interim receiver. The appointment of an interim receiver is an extraordinary remedy and I am satisfied that something more is required than evidence that the respondents owe money to contractors and utilities at the time of filing. It is necessary for the applicants to provide evidence that the appointment of a receiver is necessary. I am not satisfied that the applicants have met their burden of providing this evidence.

[66] I note that information filed by the respondents indicates that neither property taxes, nor insurance were in arrears at the date of filing.

[67] In both the affidavit evidence provided by Mr. Johnston, who is the President of the respondents, and the Trustee's Report dated November 15, 2013, there is evidence that the companies are meeting their operational expenses, including taxes, insurance, utilities, repairs and maintenance, during the proposal process. There is a lack of evidence from the applicants to counter this evidence.

[68] As to the second issue raised by the applicants, as to the lack of repairs and maintenance to the property, I am satisfied, by evidence before me, that the applicants approved a five year work plan and the respondents are at the end of year one and have four more years to complete upgrades.

[69] PrincewaterhouseCoopers, the trustee, prepared a first report to the court on November 15, 2013 and made a recommendation as follows:

> 32. The Trustee recommends that this Court does NOT issue an Order appointing PwC Inc. as Interim Receiver of the Companies pursuant to Section 47.1(1)(a) of the *BIA,* as such an order is not in the interest of any of the creditors for the following reasons:
>
> (i.) The Companies have acted, and are acting, in good faith and with due diligence;
>
> (ii.) No creditor will be materially prejudiced;
>
> (iii.) The duties being requested of an Interim Receiver are similar to the statutory duties of a Trustee under a NOI;
>
> (vi.) The Companies are required to receive and account to the Court for all income generated by the property under the NOI making an Interim Receiver redundant;
>
> (v.) The Companies are taking commercially reasonable measures to protect and preserve the property, and to operate the Companies during the NOI period.
>
> (vi.) PwC Inc. has not consented to be appointed as Interim Receiver;
>
> (vii.) Additional costs of any Interim Receiver do not outweigh any possible benefit.

[70] PricewaterhouseCoopers is already carrying out many of the same duties that a receiver would be mandated to carry out. The duties are set out under s. 54(7) of the *BIA*.

[71] This duplication of duties would increase the costs and mean less money for the general creditors.

[72] With respect, the test is not whether the respondents were having financial difficulties prior to the filing. The test is one of necessity during the proposal period.

[73] I am not satisfied that the applicants have met their burden of proving that the appointment of an interim receiver is necessary for the protection of the debtors estate, or the protection of some or all of the creditors. It is interesting that many of the creditors, some holding first position security on some of the applicant's property, were not even notified of the hearing by the applicants.

[74] In any event, to appoint an interim receiver will serve to increase the costs of the proposal process substantially, and I see no necessity to so appoint an interim receiver.

[75] The applicants' motion to appoint an interim receiver is dismissed.

[76] I will hear the parties as to costs.

Pickup, J.