

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

THE HONOURABLE)
)
)
JUSTICE CAVANAGH)
)
B E T W E E N :

FRIDAY, THE 14th

DAY OF OCTOBER, 2022

TRIPLE-I CAPITAL PARTNERS LIMITED

Applicant

and

12411300 CANADA INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

ORDER

THIS MOTION, made by Crowe Soberman Inc. in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of the Property of 12411300 Canada Inc. (the “**Debtor**”) for an order approving the sale process, set out in Schedule “A” hereto (the “**Sale Process**”), was heard this day by video conference.

ON READING the First Report of the Receiver dated August 8, 2022 (“**First Report**”), the Second Report of the Receiver dated October 7, 2022 (the “**Second Report**”), and on hearing the submissions of counsel to the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Maureen McLaren sworn October 7, 2022, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of this Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of this Notice of Motion and the Motion Record is hereby dispensed with.

RECEIVER'S ACTIVITIES

2. **THIS COURT ORDERS** that the First Report, the Second Report, and the activities of the Receiver as described therein are hereby approved.

SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process be and is hereby approved and that the Receiver is authorized and directed to commence the Sale Process for the purpose of soliciting interest in and opportunities for a sale of the property municipally known as 237B Advance Blvd, Brampton, Ontario and the equipment, leaseholds improvements and other related assets at the property (the "**Property**") of the Debtor.

4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to perform its obligations under the Sale Process, and to do all things reasonably necessary to do so.

5. **THIS COURT ORDERS** the Receiver and its respective affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Receiver in performing its obligations under the Sale Process (as determined by the Court).

SEALING

6. **THIS COURT ORDERS** that the Confidential Appendix to the Second Report shall be sealed and kept confidential pending the closing of a transaction in respect of the Real Property (as defined in the Second Report), or until further Order of the Court.

GENERAL

7. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions on the discharge of its duties and powers hereunder.

SCHEDULE "A"
SALE PROCESS

Introduction

By Order of the Honourable Justice Cavanagh dated July 22, 2022 (the "**Receivership Order**"), Crowe Soberman Inc. was appointed as receiver and manager (in such capacities, the "**Receiver**") without security, of the Property (as defined in the Receivership Order) of 12411300 Canada Inc. (the "**Debtor**").

Pursuant to the terms of the Receivership Order, the Receiver was empowered and authorized to, among other things, market and sell any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof.

Set forth below are the procedures (the "**Sale Procedures**") to be employed with respect to the solicitation of the sale of the Property, pursuant to a Court-approved sale process in these receivership proceedings.

On October 13, 2022, the Court issued an order (the "**Sale Process Order**"), among other things, approving these Sale Procedures, and authorizing and directing the Receiver to proceed with a sale process (the "**Sale Process**") to market and sell the Property in accordance with the Sale Procedures.

Subject to Court availability and the terms hereof, within ten (10) business days following the selection of the Successful Bidder (as defined herein), the Receiver shall bring a motion seeking the granting of an order by the Court (an "**Approval and Vesting Order**") authorizing the sale of the Property in accordance with these Sale Procedures.

Key Dates

| | Event | Deadline |
|----|---|---|
| 1. | Deadline to deliver Teaser Letter and NDA to those identified as Interested Parties | October 24, 2022 at 5:00 PM Toronto time. |
| 2. | Deadline to establish data room with all required financial and other information to support the Sale Process | October 24, 2022 at 5:00 PM Toronto time. |
| 3. | Plan and provide tours of the Property | Immediately and up until Offer Deadline |
| 4. | Deadline for submission of offers | November 18 2022 at 5:00 PM Toronto time (" Offer Deadline ") |
| 5. | Acceptance of successful Offer | Up to 5 days following Offer Deadline |
| 6. | Hearing of motion for Approval and Vesting Order (if no Auction) (Depending on Court availability) | Within ten (10) days of acceptance of successful Offer |
| 7. | Closing of the transaction | Within five (5) days after issuance of Approval and Vesting Order (subject to Court availability) |

Opportunity / Property for Sale

1. The Sale Process is intended to solicit interest in and opportunities for the sale of substantially all of the Debtor's property (the "**Opportunity**").
2. The Receiver, in consultation with the Broker, will be responsible for conducting the Sale Process, and, if applicable, an auction (the "**Auction**").
3. Any sale of or investment in the Property will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature or description by the Receiver or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title, and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon conditional on and pursuant to Court orders, except as otherwise provided in such Court orders.
4. Except as otherwise provided in the ultimate definitive purchase agreement(s), and subject to any permitted encumbrances therein, all of the Debtor's right, title and interest in and to the Property shall be sold free and clear of all liens and encumbrances conditional on and pursuant to the Approval and Vesting Order.

Solicitation of Interest

5. As soon as reasonably practicable, but in any event by no later than October 24, 2022, the Receiver and/or the Broker shall:
 - a. enter into listing agreement with reputable brokerage (the "**Broker**") and arrange for listing of Property on Multiple Listing Service ("**MLS**"); and
 - b. prepare: (i) a teaser letter ("**Teaser Letter**") describing the Opportunity, outlining the Sale Process, and inviting recipients of the Teaser Letter to participate in the Sale Process, and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver ("**NDA**").
6. The Receiver or the Broker will send the Teaser Letter to a list of known potential purchasers ("**Interested Parties**") as soon as possible and in any event by no later than October 24, 2022, and to any other party who requests a copy of the Teaser Letter and NDA, or who is identified by the Receiver and/or the Broker as a potential purchaser, as soon as reasonably practicable after such request or identification, as applicable.

Submission of Offers

7. The Receiver shall seek binding offers and accompanying materials from Interested Parties (a "**Binding Offer**") in accordance with the timeline set out above.
8. Any party who wishes to participate in the Sale Process must provide the Receiver and/or the Broker with an executed NDA and written confirmation of their identity, their contact information, and full disclosure of their direct and indirect principals, if any.
9. All parties must rely solely on their independent review, investigation and/or inspection of all information and of the Property in connection with their participation in the Sale Process and in any transaction related thereto.

10. Every Binding Offer must contain:
 - a. the purchase price or price range in Canadian dollars;
 - b. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - c. specific indication of the financial capability of the potential purchaser and expected structure and financing of the transaction satisfactory to the Receiver in its sole discretion;
 - d. an acknowledgement that any purchase is made on an “as is, where is” basis and that the prospective purchaser has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid;
 - e. a target closing date in accordance with the deadlines set out herein.
11. All Binding Offers are to be accompanied by certified funds payable to the Receiver in an amount equal to at least 12.5% of the total consideration contained in the Binding Offer (the “**Deposit**”).
12. A Binding Offer may not contain conditions based upon: (i) the outcome of any further due diligence, (ii) obtaining financing, or (iii) any other conditions to closing, except the usual limited conditions such as the issuance by the Court of an order approving the transaction and vesting title in and to the purchaser.
13. Any party who wishes to pursue the Opportunity must deliver their Binding Offer to the Receiver at the addresses specified below by no later than 5:00 PM (Toronto time) on or before November 18, 2022 (“**Offer Deadline**”): (i) to the Broker by email at kelly.avison@avisonyoung.com (Attention: Kelly J. Avison) (ii) to the Receiver by email at daniel.posner@crowesoberman.com (Attention: Daniel Posner), with a copy to Receiver’s counsel at ksherkin@millerthomson.com (Attention: Kevin Sherkin).
14. A Binding Offer will be irrevocable until five (5) days after the Offer Deadline.

Assessment of Offers

15. After assessing each qualified Binding Offer, the Receiver may accept a Binding Offer (the “**Successful Offer**”, and the applicable bidder the “**Successful Offeror**”) and take such steps as are necessary to finalize and complete an agreement for the Successful Offer with the Successful Offeror.
16. The Receiver may determine whether to explore any Binding Offer for the Property that does not conform to one or more of the requirements specified herein and deem such offer to be a compliant offer for the purpose of the Sale Process.
17. The Receiver shall not be under any obligation to accept the highest or best (or any) qualified Binding Offer and any selection shall be entirely in the discretion of the Receiver, in consultation with the Broker and their legal and other advisors.
18. No one, including any Interested Parties or any other participants in this Sale Process shall be entitled to nor permitted any break, termination or similar fee or reimbursement of any kind. For greater certainty, all such persons shall be responsible for their own fees

and costs of any kind, including those relating to any due diligence they may have performed, and any offers they each may make.

19. In the event a qualified Binding Offer is not selected or accepted by the Receiver, the Deposit shall be returned to the applicable potential purchaser as soon as reasonably practicable.

Other Terms

20. If a Successful Offeror breaches its obligations under the terms of its offer, and if the Receiver chooses not to proceed with the Successful Offeror, any Deposit submitted in connection with the Successful Offer shall be forfeited to the Receiver as liquidated damages and not as a penalty.
21. The Receiver may: (a) determine which Qualified Offer, if any, is the highest or otherwise best offer, (b) reject at any time before the issuance and entry of an order approving a Successful Offer, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Process or any order of the Court, or (iii) contrary to the best interests of the receivership estate, and (c) may modify the Sale Process or impose additional terms and conditions on the sale of the Property, acting reasonably.
22. The Receiver shall not have any liability whatsoever to any person or party, including without limitation any participants in this Sale Process, the Debtor, or any creditor or other stakeholder, for any act or omission related to the Sale Process. By submitting a bid, each offeror shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever.
23. Following the acceptance of the Successful Offer, and subject to the timeline set out above, the Receiver shall bring a motion to the Court (the "**Approval Motion**") for an order authorizing the Receiver to take such further actions as may be necessary or appropriate, to give effect to the Successful Offer and vest the Debtor's interest in the Property to the Successful Offeror.
24. Following the granting of any Approval and Vesting Order by the Court, the Receiver shall take all reasonable steps necessary to complete the transaction set forth in the Successful Offer in accordance with the timeline set out above.
25. Notwithstanding anything else contained herein, if it becomes evident to the Receiver that no Qualified Offers will be received, the Receiver, may terminate the Sale Process.
26. This Sale Process is solely for the benefit of the Receiver and nothing contained in the Sale Process Order or this Sale Process shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise).

TRIPLE-I CAPITAL PARTNERS LIMITED
Applicant

and

12411300 CANADA INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SALE PROCESS ORDER
(RETURNABLE OCTOBER 13, 2022)**

MILLER THOMSON LLP
40 King Street West, Suite 5800,
Toronto ON M5H 3S1
Tel: 416.595.8500
Fax: 416.595.8695

Kevin D. Sherkin LSO#: 27099B
ksherkin@millerthomson.com

Monica Faheim LSO #82213R
mfaheim@millerthomson.com

Counsel to the Receiver,
Crowe Soberman Inc.