CITATION: 8527504 Canada Inc. v. Rev Sleep Corporation, 2013 ONSC 5862
COURT FILE NO.: CV-13-1024500-00CL
DATE: 20130917

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: 8527504 Canada Inc., Applicant

AND:

Rev Sleep Corporation and 2153879 Ontario Inc., Respondents

BEFORE: D. M. Brown J.

COUNSEL: H. Chaiton, for the Applicant

J. Spetter, for the Respondents

B. Jaffe, for the proposed receiver, A. Farber & Partners Inc.

HEARD: September 17, 2013

REASONS FOR DECISION

I. Motions to appoint a receiver and to approve a "pre-packaged sale" by the receiver

[1] This morning I made two orders: (i) an order granting the application of the lender, 8527504 Canada Inc., for the appointment of a receiver over the respondent debtors, Rev Sleep Corporation and 2153879 Ontario Inc., for the limited purpose of effecting a sale of substantially all of their assets, and (ii) an order granting the motion of the proposed receiver, A. Farber & Partners Inc., for approval of a sale agreement with Somex Bedding Corporation for substantially all of the assets of the Debtors and a related vesting order. These brief reasons explain why the orders were granted.

II. Appointment of a receiver

[2] There was no dispute on the evidence about the indebtedness of the Debtors to the Lender for about $2.965 million, the enforceability of the Lender's security or the Lender's compliance with the statutory notice of demand requirements. The Debtors do not oppose the appointment and they have consented to the Lender's early enforcement of its security. It was also clear that absent a sale of the Debtors' business to the proposed purchaser, the Debtors would terminate their businesses, and a liquidation would result. By contrast, if the proposed sale is approved, the business would continue with the preservation of the jobs of most of the 145 employees. Under

those circumstances, I concluded that it was just and convenient to appoint Farber as Receiver for the limited purpose of entering into the proposed sale agreement.

III. The proposed sale

[3] As explained in the First Report of the proposed receiver, this past May the Lender group engaged a consultant to commence a marketing and sales process for the Debtors' businesses. The consultant concluded that under present market conditions competitors most likely would not be interested in acquiring the Debtors' mattress business, so the consultant and Debtors' identified other possible prospective purchasers with a presence in the mattress market. A solicitation process was then run in which 13 prospective purchasers were given information about the business, ten of which signed confidentiality agreements which resulted in their receipt of a confidential information memorandum. Nine were granted access to the electronic data room to conduct due diligence.

[4] In mid-June the Debtors received two preliminary letters of interest for the whole business from interested parties which had been on the initial distribution list. One submitted a LOI on August 9; it was not acceptable to the Debtors or the Lender. A week later another submitted a higher offer, which was accepted by the Debtors and Lender.

[5] With the consent of the proposed purchaser and the Lender, Farber engaged a valuator to provide valuations of the Debtors' inventory, machinery and equipment on a net orderly and gross forced liquidation valuation basis. Those valuations were filed on a confidential basis. They disclosed that the price under the proposed sale agreement exceeded the valuations.

[6] The purchase price in the proposed agreement is in the aggregate amount of the Debtors' indebtedness to secured creditors and any claims that rank in priority to secured creditors, plus the Receiver's fees and expenses. The purchaser will also assume the vast majority of employee liabilities, including the Debtors' obligations under certain collective agreements.

[7] In light of that evidence I concluded that (i) a reasonably fair and comprehensive marketing and sales process had been conducted, (ii) the proposed purchase price exceeded the valuations of the Debtors' main assets, (iii) any claims in priority to those of the secured creditors would be satisfied, and (iv) given that the businesses would continue on a going-concern basis, the interests of other creditors and interested parties had been fairly treated. In sum, the evidence demonstrated that the principles in *Royal Bank of Canada v. Soundair* (1991), 4 O.R. (3d) 1 (C.A.) had been met. Further, in light of the commercially sensitive nature of the valuation evidence filed by the Receiver, I granted an order sealing those materials: *Sierra Club of Canada v. Canada*, [2002] 2 S.C.R. 522.

D. M. Brown J.

Date: September 17, 2013