



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-21-00664273-00CL DATE: July 5, 2023
REGISTRAR: T. Patel

TITLE OF PROCEEDING: American General Life Insurance Company et al v. Southmount Healthcare Centre Inc. et al
NO. ON LIST: 2

BEFORE JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Aryo Shalviri Jake Harris	Counsel for the Receiver	aryo.shalviri@blakes.com jake.harris@blakes.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Evan Cobb	Independent Counsel to the Receiver	evan.cobb@nortonrosefulbright.com
George Bourikas Katherine Forbes Chris Gard	Receiver	gbourikas@kpmg.ca katherineforbes@kpmg.ca cgard@kpmg.ca
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ENDORSEMENT OF JUSTICE STEELE:

1. Motion via Zoom heard on July 5, 2023.
2. The Receiver seeks the Court's approval of its activities and the proposed distribution to the applicants, among other things.
3. The relief sought is not opposed.
4. The requested relief is granted. Order attached.

Preliminary Matters

5. On July 4, 2023, third parties to this proceeding, the defendants in the Larch Litigation, filed a motion. However, the plaintiff in the proceeding was not in attendance today, and it was not clear if the plaintiff was served.
6. The hearing of that motion is scheduled for August 14, 2023 at 11:30 am (30 minutes).

Proposed Distribution

7. The real properties of the debtors have been sold by the Receiver through sales processes that were previously approved. There have been interim distributions made to the applicants. The Receiver holds approximately \$1 million.
8. The Receiver seeks Court authorization to distribute \$750,000. The remaining funds will be held by the Receiver and used to fund the remaining costs of these proceedings, among other things. The Receiver also seeks Court authorization to make further distributions to the applicants if there are funds remaining after the Receiver completes the remaining activities.
9. The balance of the applicants' secured debt is approximately \$21 million. There will not be enough funds in the estate to repay all the money owing to the applicants.
10. The Receiver's counsel has provided an opinion with respect to the validity and enforceability of the security granted in favour of the applicants. The applicants hold first in time real property registrations and registrations under the PPSA against the debtors' property.
11. The Receiver evaluates three potential issues that could affect priorities:
 - a. HST arrears: The Receiver notes that it is unclear whether there are HST arrears outstanding. However, the deemed trust that would otherwise apply is reversed because the applicants have been placed into bankruptcy. Any HST claim is now subordinate to the secured creditors' claims (s. 67(2) of the BIA);
 - b. Construction Lien: The Receiver was contacted by counsel for a potential construction lien claimant, who registered a lien against one of the properties in the amount of \$160,000. The Receiver states that it has not received any information that would indicate that the value of the property in question has increased since the date that the construction lien arose such that section 78 of the *Construction Act* (Ontario) would assist the claimant. The Receiver states that

information was sought, and as of the date of the Fourth Report, the Receiver has not received any further information to suggest a potential priority claim that would rank ahead of the applicants.

- c. 100 Colborne Purchaser: The purchaser of this property previously requested compensation regarding a municipal tax appeal. The Receiver states that any amounts received in respect of that tax appeal attributable to the period prior to the closing of the sale are an “Excluded Asset” under the agreement and do not belong to the purchaser. The Receiver is satisfied that these are assets of the estate.

12. I am satisfied that the distribution motion ought to be granted.

Should the Court dispense with the requirement for the Receiver and Receiver’s counsel to pass their Accounts?

13. The Receiver asks the Court to dispense with the requirement for the Receiver and its counsel to pass their accounts for the period ending May 31, 2023 and thereafter, unless the applicants request that the accounts be passed.

14. The Receiver states that in addition to its inherent jurisdiction to waive compliance with an order, the Court has the authority to amend, set aside, or vary an order under Rule 59.06. I agree with the Receiver that the Court has the jurisdiction to waive paragraph 19 of the Appointment Order on a motion brought in the proceedings.

15. The Receiver notes that the Court has granted similar relief in other proceedings, including in *Tilden Car Rental Inc. (Trustee of) v. Tilden Car Rental Inc.*, 1996 CarswellMan 623 (MB QB) and *American General Life Insurance Company v. Victoria Avenue North Holdings Inc.*, Distribution and Ancillary Matters Order, entered on May 24, 2022, at para. 9.

16. The applicants are the only party with an economic interest. As noted above, they are expected to suffer a significant deficiency on their claim. They are looking to save professional costs by avoiding a court attendance to deal with the accounts. Any additional costs will effectively be borne by the applicants. Accordingly, the applicants are content to review the accounts themselves and if they have an issue, require the Receiver and its counsel to pass their accounts.

17. The Receiver is of the view that it would not be a constructive use of the remaining funds to have a fee approval motion, and that waiving this typical requirement is not prejudicial to any stakeholder.

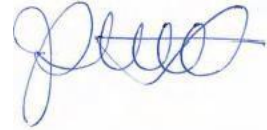
18. I am satisfied that it is appropriate to grant this requested order.

Approval of Receiver’s activities

19. I am satisfied that the activities of the Receiver set out in the Fourth Report were necessary, consistent with the Receiver’s duties and powers, and were undertaken with efficiency and reasonableness in the interests of the stakeholders.

Receiver Discharge

20. The Receiver seeks a discharge upon the filing of a certificate of the Receiver, certifying that all matters have been completed to its satisfaction. The Court frequently grants this type of relief.
21. The nature of the release sought is similar to those granted by the Court in other proceedings, including *Urbancorp (Leslieville) Developments Inc. et al.*, Court File No. CV-16-11409-00CL, Order (Final Distributions, Approval of Activities and Fees & Discharge) entered on September 14, 2020 at paras. 18-19; *33 Yorkville Residences Inc. et al.*, Court File No. CV-20-00637297-00CL, Approval and Discharge Order entered on March 22, 2023, at para. 12.

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the lower right quadrant of the page. The signature is fluid and cursive, with a horizontal line extending from the end of the name.