

Court File Number: CV-19-614593 - CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Corner Flag

Plaintiff(s)

AND

Erwin Hymer Group

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See counsel list attached.		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
☐ Adjourned to: _____
☐ Time Table approved (as follows):

On March 27, 2019 I heard a motion
by The Receiver of The respondents
EHNA for approval of an expedited
sales process.

~~NAP~~ ^{An} unsecured creditor of EHNA,
KS2, retained counsel on who
wrote to counsel for The R on
March 26, after 5:00 PM, indicating

March 28, 2019

Date

James J.

Judge's Signature

☐ Additional Pages 11

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

That KS2 opposed approval of the sales process on the basis of "a number of concerns" which included the "short time frame" for the proposed process.

KS2 (and possibly two other creditors) want to bring a motion for the appointment of a Creditor Committee and want the sales process to be extended so that the Creditor Committee could be formed and have input into the process and the review of bids.

I ^{MAP} denied both ~~requests~~ requests ^{MAP} and approved the sales process with reasons to follow. These are those reasons.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The R was appointed Feb 15, 2019.

The R has had extensive communication with both secured and unsecured creditors. For reason I will explain below, it has always been the intention to have an expedited sales process. This was made clear in the first communication to all creditors sent February 22, 2019.

Further, the affidavit in support of the appointment by the President of Corner Flag, also highlighted the intention to employ an expedited sales process, and the reason for doing so.

Counsel for TS2 was not able to explain why his client was unable to provide affidavit

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

material in support of his request or why the decision to raise the issue of delaying the sRP and bringing a motion for a Creditors Committee appointment after business hours on the night before the motion.

That, however, is not the real problem.

EHNA was, in the period immediately prior to the R's appointment in serious financial trouble. It had a liquidity crisis that could have resulted in a free fall insolvency, employees unpaid and a fire sale liquidation of assets.

Corner Flag agreed to infuse

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

\$5 million into the company to meet payroll needs and fund a "warm" shutdown of the business while a sales process, calculated to sell the business as a going concern under which at least some employment and viable business would survive.

That financial support is sufficient to take the process to the selection of bid. CF will not provide additional financial support. CF's input into this process is not tactical. It has made it clear it will not be making a bid of any kind.

The evidence supports the appropriate use and ~~use~~ need

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

for an expedited sales process.

First ^{MAP} ~~the~~ ~~ETHNA~~ has already been marketed twice in the last 3 years, once in 2016 and again in 2018.

Second, The sales process has already been initiated. Potential buyers have had a look and as of March 15, 18 had already signed confidentiality agreements. (That number is now 21). For a highly specialized business (The assembly and sale of recreational vehicles) this is actually a short process.

The terms of the process are calculated to keep barriers to

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

entire low and attract individual bidders. That is, in fact, the reason for seeking court-approval of the process.

It is, in my view, well structured to enhance maximization of value.

That the R has expressed the opinion that:

a) The process is commercially reasonable;

b) The information made available in the Data Room, together with public information, will be sufficient for an interested party to make an informed decision to bid on this

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

opportunity;

c) The process is sufficient to expose the business to the market, particularly in light of the prior marketing process; and

d) The time period, while expedited, is sufficient to allow interested parties to perform due diligence and make offers

Importantly, on this point, the R, supported by CF (which is also knowledgeable in this area of RV assembly and sales) take the view that an expedited process is necessary having regard to seasonal issues (The fall is a very important

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Time for RV sales, so this process needs to be concluded as early as possible to capitalize on that.

It is also necessary to overcome market uncertainty among vendors, dealers and customers.

It is also necessary to avoid expanding the "taint" or market cloud/suspicion that is already present due to prior problems in 2018.

And, finally, it is also necessary, because as mentioned above, the R does not have access to sufficient funding to support a prolonged process.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

For all these reasons, I denied KS2's request for an extension or delay of the sale process and granted the order approving the process.

This is without prejudice to the position KS2 may wish to take on the return of the Sale Approval motion, if there is one.

KS2 also asked me to set a date for the argument of a motion ~~to~~ for an order requiring the establishment of a Creditor Committee.

I declined to do so on the basis that no draft motion or supporting material had been drafted. There is not the slightest ~~hint of~~ evidence. Therefore, addressing

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Why this should, and needs to happen, how it will be funded, what would be gained by it etc.

Commercial list practice is generally not to schedule motions in the absence of at least some of this information. I specifically made this determination without prejudice to the right of F52 or anyone else for that matter to come before the Court to schedule such a motion with supporting material, in the future.