

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *In the Matter of 0081092 B.C. Ltd., In Liquidation*,
2025 BCSC 913

Date: 20250515
Docket: S232641
Registry: Vancouver

In the Matter of Section 325 of the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended

And

In the Matter of 0081092 B.C. Ltd., In Liquidation

Before: The Honourable Justice K. Loo

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.
May 5, 2025

Place and Date of Judgment:

Vancouver, B.C.
May 15, 2025

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Introduction

[1] This is an application seeking an order of this Court identifying the successful bid arising from a sealed bid process, in relation to the sale of the lands and assets of 0081092 B.C. Ltd., the company subject to this liquidation proceeding (the “Company”). At the end of the hearing, I identified the successful bid and advised counsel and the parties that brief reasons for choosing that bid would follow. These are my reasons.

The sales process

[2] This liquidation proceeding is one of a number of actions and proceedings of which I am seized, all relating to disputes among Ted Callahan and his brothers: Douglas, Bruce, and Robert. The four brothers own or control the shares of the Company. The Company owns five contiguous parcels of land on Lakeshore Road in Kelowna together with certain other assets (collectively, the “Property”).

[3] In November 2020, the shareholders of the Company resolved by special resolution to commence the voluntary liquidation of the Company and to appoint a liquidator to cause the liquidation of the Property, while operating the Company as a going concern.

[4] In December 2024, this Court approved a specific process to market and sell the Property, by way of two orders. One of the orders, dated December 6, 2024, attaches a document governing the marketing and sales process. The other, dated December 5, 2024, sets out the process for the submittal, review, and evaluation of sealed bids.

[5] The December 5 order states that phase 2 qualified bidders were entitled to submit sealed bids in accordance with the two December orders by 9:00 a.m. on May 5, 2025, defined in the orders as the Phase 2 Bid Deadline. It provides that the sealed bids had to be delivered to counsel for the liquidator in a sealed envelope by or before that deadline.

[6] Further, the December 5 order sets out the following factors to be considered by this Court in approving a sale (the “Bid Factors”):

... the Court will then make an Order approving a sale on the basis of the bid which, in the Court’s view, is in the best interests of the Company, having regard to various factors, including the following Bid Information and Terms:

- a. price, as the primary variable;
- b. the identity, circumstances and ability of the bidder to successfully complete the proposed transaction, including any conditions precedent in favour of the bidder attached to the bid and the likelihood of waiver or satisfaction of such conditions;
- c. the form of the bid;
- d. factors affecting the speed, certainty and value of the transaction;
- e. assets included in or excluded from the bid;
- f. the proposed closing date of the transaction;
- g. the amount of the deposit contemplated; and
- h. the ability of the bidder to finance and ultimately consummate the proposed transaction.

[7] The December 5 order also provides that “[t]he highest or any Sealed Bid will not necessarily be accepted.”

The sealed bids

[8] At 10:00 a.m. on May 5, 2025, I received six sealed bids from counsel for the liquidator. One was submitted by Ted Callahan and two were submitted by corporations related to him: Shasta Properties Ltd. (“SPL”) and Midwest Ventures Ltd. (“Midwest”). Two were submitted by 1531519 B.C. Ltd. (“519”), a company controlled by the other Callahan brothers. One was submitted by Infinity Properties Ltd. (“Infinity”), a company that I understand to be unrelated to the parties to this proceeding.

[9] One of the bids advanced by 519 is in the amount of \$46,621,112 (“519 bid #1”). 519 bid #1 is a “clean” bid in that it has no subject conditions. However, Ted

Callahan argues that the bid contains two terms that make it non-compliant with the December 5 order. One term provides that the purchased assets will include “all intellectual property of every nature owned or used by the Vendor in connection with the business being carried out on the Lands, whether registered or unregistered, including the name ‘Shasta Mobile Home Park’ and all other trademarks, trade names, websites, social media sites, internet domain name registrations and email addresses” (the “IP term”). Second, 519 bid #1 provides that \$15 million of the purchase price shall be satisfied by way of a promissory note, which shall be repaid by the purchaser by way of set-off against the other brothers’ entitlement when this Court permits the distribution of the sales proceeds to the shareholders (the “promissory note term”).

[10] The second bid advanced by 519 is in the amount of \$42,621,112 (“519 bid #2”). 519 bid #2 has no subject conditions, and it does not include the promissory note term, but it does include the same IP term as 519 bid #1.

[11] The bid submitted by SPL is in the amount of \$45,000,000 (the “SPL bid”). The liquidator and 519 argue that the SPL bid ought not to be approved because it is subject to conditions which are uncertain and discretionary. The SPL bid provides, in part:

The Purchaser’s obligation to complete the transactions contemplated by this Offer to Purchase is subject to the following conditions (which are for the sole benefit of the Purchaser) that are on or before 5 pm Vancouver time of the Purchaser’s Condition Waiver Date

... the Purchaser being satisfied with obtaining greater certainty in regard to Edward Callahan’s obligations relating to any matrimonial amounts payable and timing thereof;

... the Purchaser being satisfied in its sole discretion with discussions with tenants [of the Property’s mobile home park] regarding potential relocation issues...

(the “SPL subject conditions”).

[12] The prices offered by Infinity, Ted Callahan, and Midwest are significantly less than the prices offered in the three highest bids. The analysis below will focus on the three highest bids, being those advanced by 519 and SPL.

Assessing the sealed bids

[13] It is my view that the prices offered by all of the bids, other than the bid submitted by Infinity, are reasonable in comparison to the Property’s appraised

value. The only appraisal before the Court valued the Property, as of January 2023, at between \$35 million and \$40 million. Therefore, although it is open to this Court not to accept any bid, this is not a situation in which all of the bids must be rejected on the basis of price.

[14] The differences between the bids made by 519 and SPL require this Court to consider the Bid Factors together with the bids' compliance with the terms of the December orders. I note that the deposit terms between the bids are not materially different, and there appears to be no issue with the ability of the bidders to finance and ultimately consummate the proposed transaction, so those Bid Factors will not weigh heavily in the analysis.

The promissory note term

[15] As stated, Ted Callahan argues that the promissory note term makes 519 bid #1 non-compliant with the December 5 order. That order states that sealed bids must be "all cash offers."

[16] No authorities defining "all cash offer" were provided to the Court, but the liquidator appears to accept that 519 bid #1 is not such an offer. She deposes:

In my experience, sales that include a credit bid component are common, and credit bids are often accomplished by way of a promissory note. There is nothing unusual about a credit bid by way of a Promissory Note where an interested party who is owed money participates in a sales process.

In my view, [519 bid #1] is likely to produce an outcome equivalent to an all-cash bid in the current circumstances ...

[Emphasis added.]

[17] I do not doubt the liquidator's evidence that credit bids are common or that 519 bid #1 is likely to produce an outcome equivalent to an all-cash bid in these circumstances. Further, I have no reason to conclude that the promissory note term creates any material risk for the Company. However, the question to be determined by this Court is not whether the promissory note term creates risk, is "unusual," or is "likely to produce an outcome equivalent to an all-cash bid." Rather, this Court is to approve a bid in accordance with the December 5 order, having regard to the requirements and Bid Factors therein.

[18] In my view, the term in the December 5 order requiring that sealed bids must be all cash offers is mandatory. I agree with Ted Callahan that the promissory

note term means that the Company would be financing 519's purchase in part, and that this financing would provide 519 with an advantage not contemplated by the December 5 order. For this reason, I have concluded that 519 bid #1 is non-compliant with the December 5 order and must be rejected.

The IP term

[19] As stated, Ted Callahan argues that both of 519's bids are non-compliant because of the IP terms contained in them. He submits that there is an ongoing dispute regarding the brothers' use of the name "Shasta" and that this Court ought not to put its imprimatur upon that dispute by approving a bid containing the IP term. However, in my view, this argument ought not to be accepted.

[20] It appears uncontested that the mobile park on the Property has been known for many years as the Shasta Mobile Home Park. As submitted by the liquidator, the IP terms provide only that a sale under a 519 bid will include whatever interest in the intellectual property the Company presently owns. In other words, if there is a dispute in a future proceeding about the ownership of the Shasta name, an order of this Court approving a 519 bid will not affect the outcome of that dispute.

[21] I note that the December 5 order provides that the sealed bids must be "substantially" in the form of the template attached, and that the Bid Factors contemplate assets being included or excluded from the bid. Given the evidence described above, it is my view that the IP terms are not particularly material, and their inclusion in the 519 bids does not constitute a substantial departure from the template. Further, given that bids are specifically permitted to include or exclude assets, I am unable to find that the IP terms are prohibited by the December 5 order.

The SPL subject conditions

[22] In respect of the SPL subject conditions, the liquidator deposes:

The most important feature of [SPL's] bid in my view is the Purchaser's Condition in Section 8.1 and the relatively lengthy (154 day) Purchaser's Condition Waiver period. [The SPL subject conditions] are so subjective as to incapable of objective assessment or enforcement by the Liquidator, such that this bid essentially amounts to an option to buy, rather than an offer capable of acceptance and enforcement.

[23] I accept and agree with the liquidator's opinion in this regard.

[24] Ted Callahan argues that it is clear on the evidence advanced earlier in this proceeding that he wants the property and that he is incentivized to fulfill the conditions. That may be so, but if he were certain that the conditions will be fulfilled to his satisfaction, one would expect that he would not have included the SPL subject conditions as terms of the SPL bid.

[25] The Bid Factors require this Court to consider "conditions precedent in favour of the bidder attached to the bid and the likelihood of waiver or satisfaction of such conditions," as well as factors affecting the "certainty" of the transaction. If the SPL bid were accepted, I find that there would be significant risk that SPL would decide not to waive the subject conditions or declare them satisfied, and that the Company would be required in October 2025 to start or continue the sealed bid process anew.

[26] In my view, given the potential prejudice to the Company of accepting an uncertain bid that, as the liquidator deposes, essentially amounts to an option, approval of the SPL bid would not be in the best interests of the Company.

Confidentiality

[27] During the course of the hearing, I made an order that the bid documents, which were distributed to the parties to this litigation and to the third-party bidder Infinity, are confidential and are not to be disclosed to any other persons except the bidders' professional advisors.

[28] Despite the fact that certain aspects of the bids have been disclosed in these reasons, the bid documents shall remain confidential and shall not be disclosed to any other persons unless required by law or otherwise ordered by this Court.

Conclusion

[29] As stated, 519 bid #1 is rejected as being non-compliant with the December 5 order. Further, approval of the SPL bid would not be in the best interests of the Company due to its conditional and discretionary nature. Although the price in 519 bid #2 is approximately \$2.4 million lower than the price in the SPL bid, 519 bid #2

is both subject free and compliant with the December orders, and, in my view, approval of that bid is in the best interests of the Company.

[30] For all of these reasons, I approve the sale of the Property to 519 on the basis of 519 bid #2 in the amount of \$42,621,112.

“The Honourable Justice Loo”