

Insolvency of a Home Builder - a “Not-So Fine Haus”

Interim Receivership of
7483547 Manitoba Ltd. o/a Fine Haus Building Co. and My Manitoba

Background

- Family business began operations in 2017 constructing single family homes in Niverville and surrounding area
- In late 2019, the president moved to US, leaving co-director (sister) to deal with insolvent business; she was not active participant in the business
- PKF and Lazer Grant tasked with finding a solution
- Applied for an Interim Receiver to take possession and control, assess the situation, deal with stakeholders, develop a strategy to create some recovery for creditors
- CBC, CTV and Niverville Citizen – “families losing homes”

Books & Records

- 5 banker boxes were retrieved and analyzed to identify the extent of liabilities owing and the state of each unfinished projects
- Approximately 50 unsecured creditors owed over \$1.5MM
- Unfinished homes, deposits on 50 lots, 1 complete show home
- CRA payroll debt approximately \$10,000 unpaid source deductions and employees T4's to be prepared
- No wages owing

Application for Interim Receivership

- Unorthodox application required several attempts to convince Court of the merits of the application and benefits to all parties
- Interim Receivership with no secured creditor? – no precedent
- Sister a co-director in name only – acting for all stakeholders
- needing assistance of the Court to best deal with situation
- Managing Stakeholder interests:

Unsecured Creditors	Mortgages	Builders lien & trust claims	Director / Owner	Home buyers
Arbitration settlement	Media – CTV and CBC	Employees and CRA	Neighbors concerns	New home warranty

Our findings...

- Company unable to carry on, active owner fled
- Insurance policy lapsed
- 20 real estate projects at various stages of completion
- incomplete homes needing immediate remedial steps to protect their integrity; liability concerns (Tyvek house wraps, exterior doors open, foundations needing backfill, units with no heat or insulation)
- Home buyers paid deposits & made interim advances
- \$1.4MM owing to trades; builders liens registered on title

Ongoing projects - assessment

- Three Way Builders (Steinbach) completed a thorough assessment of all projects – cost to complete versus fund still owing
- 12 new lots – undeveloped; 1 complete show home with mortgage, 6 homes partially complete with builders' liens, 1 home buyer dissatisfied – in arbitration
- Protect properties, change locks, board up doors/windows, install temporary heat
- Insurance lapsed Dec 2019 – Negotiated an extension with Three Way's insurer

Builders' lien settlement

- PKF took over Fine Haus's former lawyer's files to sort out the status of ongoing litigation with regard to Builders' liens
- 5 homes with holdback funds totaling over \$60K
- PKF applied to Court for advice
- All parties invited to attend
- Court heard matter recommended parties meet and sort it out

RM of Hanover

- 10 homes built by Fine Haus in RM of Hanover
- RM holding \$23,300 deposit funds and refused to pay Receiver unless deficiencies were remedied
- Three Way's analysis concluded that the cost to remediate each home exceeded the value of each respective deposit.
- The Receiver assigned the deposits to home owners who were able to complete the remediation at their own cost and thus recover their deposits directly from the RM

Show Home

- The only fully completed home in Fine Haus inventory
- An offer to complete sale was aborted at time of Receivership
- Receiver attempts to re-active the offer
- Buyer no longer interested
- New listing results in offer for \$342,500 on an “as is where is” basis – without new home warranty
- Sale completed - \$79,599 realized; SCU mortgage paid off

Heloise Bay – Arbitration hearing

- Home completed and sold but Fine Haus and purchaser suing each other over “deficiencies”
- Receiver joined in the Arbitration
- Liens on title to be vacated as part of settlement
- Receiver negotiated a discharge and mutual releases
- Buyer paid \$40,000 to settle the matter

Fifth Avenue Estates - Developer

- Fifth Avenue was a developer in a new 1,000 lot housing development in Niverville
- Fine Haus purchased 22 lots from the Developer for \$56,000
- 8 lots homes were built but 14 lots remained
- Buyers paid Fine Haus between \$500 and \$14,495 toward new home construction; many had abandoned deposits choosing to purchase elsewhere
- The Receiver was unsuccessful in recovering the deposits given their breach of the development agreement

National New home warranty - Aviva

- Fine Haus was registered under the New Home Warranty Program
- 15 claims opened up by home buyers totaling \$118,000 in home deficiencies
- Receiver assisted new home owners to deal directly with Aviva to recover any funds available to them to correct home deficiencies

Builders' liens

- Fine Haus' lawyers held \$90,904 in a trust account representing holdbacks on 8 dwellings
- 9 builders' liens were registered on title
- PKF negotiated a settlement with payouts on a pro-rata basis based on the value of each respective lien
- Claimants received approximately 67%
- Summarize the funds paid to PKF holdbacks
- Purchasers received their homes – clear and free of liens so they could complete the construction (deposit & mortgage preserved)

Realization

- Bank balance - \$43K & saving account - \$18K
- Dodge Caravan - public auction - \$2K
- Show Home - \$79K
- Sale of Briarfield - \$30K
- Account Receivable / Deposit - \$27K
- Arbitration - \$40K
- Total \$239,000

Results

- CRA paid source deduction arrears; employees T4s
- Properties protected until matters resolved; liability contained
- Show home sold; mortgage retired in full
- lien claims were settled in an orderly fashion using the Receiver's powers; owners received title to homes & liens discharged
- Arbitration matter settled with recovery for creditors
- Expedited a foreclosure for secured creditor
- New home warranty dealt with deficiencies directly with owners
- \$239,000 net proceeds; \$22,000 in dividends paid to unsecured creditor (1.5%)
- Co-director (sister) provided relief

Questions: