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Monetizing Public Listings in Receiverships

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The Commercial List of the Ontario Superior Court of Justice recently granted an order structurally similar to a reverse vesting order in the receivership proceedings of Vert Infrastructure Ltd. (Vert). This first-of-its-kind order was granted on the motion of Vert's receiver, KSV Restructuring Inc. (KSV).¹

The order, granted on June 8, 2021, allowed KSV to monetize Vert's public shell to the benefit of Vert's creditors, while vesting Vert's assets and liabilities in a trust and appointing KSV as trustee, terminating the receivership of Vert itself but continuing the administration of its assets and claims in the trust in an identical fashion to the receivership.

Legal Innovation

Traditionally, utilizing a reverse vesting order required the existence or creation of a corporation into which the unwanted assets were transferred and related claims were channelled. In a receivership, the ability to create a new corporation and the related governance and ownership considerations are somewhat problematic and certainly would not be easily recognized by a court as being within its accepted discretionary authority. However, a court certainly has the jurisdiction to create a trust by order. Therefore, instead of a new corporation, the motion in Vert sought to create a trust into which the assets and claims would be transferred with the receiver becoming the trustee of the trust.

Decision

In granting the order, the Court issued an endorsement, finding that the transaction was designed in a practical manner using judicial tools available to the Court – specifically, a vesting order, claims channelling and the creation of a common law trust – all for the benefit of Vert's creditors.

Consequences

Reverse vesting orders were previously thought to be possible only in proceedings under the *Companies' Creditors Arrangement Act*, however, this decision confirms that reverse vesting orders can be obtained in receivership proceedings with the appropriate structure. This decision provides insolvency professionals with additional flexibility in structuring sales and reorganizations with potential purchasers and insolvent businesses, allowing them to monetize previously unmonetizable assets and maintaining potentially valuable attributes of the corporate debtor, which, until now, have been lost in bare asset sales. It also demonstrates a court's willingness to work with counsel to come to creative solutions within insolvency proceedings to the benefit of creditors generally.

¹Davies is acting for KSV in its capacity as receiver of Vert.

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