



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE
NO.:

CV-23-00710411-00CL

DATE:

September 11, 2025

NO. ON LIST: 1

TITLE OF
PROCEEDING:

First Source Financial Management Inc. v. King David Inc. et al.

BEFORE:

JUSTICE JANA STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	Receiver	jennifer.stam@nortonrosefulbright.com
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Sanjeev Mitra	Home Trust	smitra@airdberlis.com
Gordon Vance	King David Inc.	gvance@rossnasseri.com
Jeff Berger	TDB Restructuring (Court-Appointed Receiver)	jberger@tdbadvisory.ca
Bryan A. Tannenbaum	TDB Restructuring (Court-Appointed Receiver)	btannenbaum@tdbadvisory.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE J. STEELE:

[1] The Receiver of the Property owned by King David Inc. brings a motion seeking:

- a. Approval of the Second Sale Process for the sale of the Lands, including the retention of a new listing agent;
- b. Approval of the Stalking Horse APS, solely for the purpose of constituting the “stalking horse bid” in the Second Sale Process;
- c. Sealing certain confidential materials pending completion of the Second Sale Process or further Order of the Court; and
- d. Approving the Receiver’s Interim R&D.

[2] No one opposes the relief sought by the Receiver. The first and second priority creditors, Home Trust and First Source, respectively, support the relief sought.

[3] Capitalized terms used in this endorsement that are not defined herein have the meaning set out in the Receiver’s factum.

[4] In 2024, Avison Young conducted a sales process (the First Sale Process), which did not result in any bids that were supported by Home Trust. Accordingly, the Receiver now seeks approval to commence the Second Sale Process. The Receiver requested proposals from three potential experienced commercial real estate brokers, two of which submitted proposals. The Receiver has selected Cushman & Wakefield as the new listing agent.

[5] The Court has jurisdiction to approve a proposed sale process pursuant to s. 243(1)(c) of the BIA. The court will have reference to the well-known *Soundair* factors (which must be considered by the court when considering a proposed sale) in determining whether to approve a proposed sale process. The court should give additional consideration to the factors set out in *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750, at para. 6.

[6] Further, the court must give significant weight to the recommendation of its receiver, a court-appointed officer: *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, at paras. 10 and 19. The Court of Appeal stated, at para. 19:

[...] [C]ommercial court judges also give substantial deference to the decisions and recommendations of a receiver as an officer of the court. If the receiver’s decisions are within the broad bounds of reasonableness and the receiver proceeded fairly, after considering the interests of all stakeholders, the court will not intervene [citations omitted].

[7] The proposed Second Sale Process is set out at section 7.3 of the Receiver’s First Report. The qualified bid deadline is six weeks after the commencement of the process. Given that the Lands were already marketed for a significant period of time, among other things, the Receiver is of the view that the duration of the Second Sale Process is sufficient.

[8] Home Trust has submitted a Stalking Horse bid that is a combined cash and credit bid offer in order to set a floor for the pricing. The requirements for a Qualified Bid are set out in section 7.5 of the Receiver’s First

Report. Among other things, it must exceed the Stalking Horse Bid by \$10,000.¹ In *CCM Master*, at para. 7, the Court confirmed that “the use of stalking horse bids to set a baseline for the bidding process [...] has been recognized by Canadian courts as a reasonable and useful element of a sale process.”

[9] The court in *Re DCL Corporation*, 2023 ONSC 3686 found the following questions as relevant to the assessment of the acceptance of a proposed stalking horse bid:

- a. How did the stalking horse agreement arise?
- b. What are the stability benefits?
- c. Does the timing support approval?
- d. Who supports or objects to the stalking horse agreement?
- e. What is the true cost of the stalking horse agreement?
- f. Is there an alternative?

[10] The Receiver recommends that the Stalking Horse APS be approved solely for the purpose of constituting the “stalking horse bid” in the Second Sale Process. The Receiver has assessed the reasonableness of the proposed price by reference to the results of the First Sale Process. The respondents, although not opposing the motion, referred to the expert opinion they had obtained regarding a current valuation of the lands at issue. As noted by the Receiver, the testing of the market is a preferable means to assess value than hypothetical appraisals: *Business Development Bank v. Devine Brokers & Appraisal Ltd.*, 2013 NSSC 435, at paras. 13-14. Further, the court places a high degree of reliance on the business judgment employed by a receiver: *Business Development Bank*, at para. 39.

[11] I am satisfied that the Second Sale Process should be approved for the reasons set out at para. 19 of the Receiver’s factum. I am satisfied that the Stalking Horse APS within the Second Sale Process should be approved for the reasons set out at para. 25 of the Receiver’s factum.

[12] The Receiver asks the court to seal the Confidential Appendices, which include confidential information relating to the following matters:

- a. Bids submitted during the First Sale Process;
- b. The listing proposal solicited from listing agents for the First Sale Process and Cushman’s listing proposal for the Second Sale Process; and
- c. Certain aspects of Avison Young’s market progress report, including the identities of the parties who were granted access to the data room.

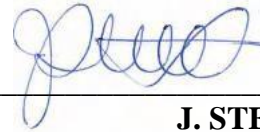
[13] I am satisfied that the time limited, and limited in scope, sealing order that is sought satisfies the test set out in *Sienna Club of Canada v. Canada (Minister of Finance)* as modified by *Sherman Estate v. Donovan*. It is common to temporarily seal commercially sensitive material when assets are to be sold under a court process. The disclosure of the confidential appendices could have a detrimental impact on the Second Sale Process and

¹ The Stalking Horse Bid is \$30 million. The different number in 63(a) of the Receiver’s First Report takes into account the different commission structure for the listing agent with a credit bid.

any future sale process should one be required. No stakeholder will be materially prejudiced by the requested sealing order, which applies to only a limited amount of information for a limited period of time.

[14] The Receiver is directed to provide the sealed confidential appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed. Counsel is further directed to apply, at the appropriate time, for an unsealing order, if necessary.

[15] Order attached.

A handwritten signature in blue ink, appearing to read "J. Steele, J.", positioned above a horizontal line.

J. STEELE, J.

Date: September 11, 2025