

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

FACTUM OF THE RECEIVER FOR APPROVAL AND VESTING ORDER MOTION
(Returnable December 4, 2024)

December 2, 2024

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**Lawyers for the Receiver, TDB Restructuring
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TO: Service List

PART I. OVERVIEW

1. This motion is brought by TDB Restructuring Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**” and together with the Kingston Property, the “**Properties**”), for, among, other things, the approval of the sale of the Toronto Property.

2. In particular, the Receiver seeks Orders:

- (i) approving the sale transaction (the “**Transaction**”) in respect of the Toronto Property, as contemplated by an asset purchase agreement between the Receiver and Arjun Anand, in trust (the “**Toronto Purchaser**”), dated September 26, 2024 (the “**APS**”);
- (ii) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed Approval and Vesting Order (the “**AVO**”), transferring and vesting all of 5004591 Ontario Inc. (the “**Debtor**”)’s right, title and interest in and to the Toronto Property as the Toronto Purchaser will direct, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
- (iii) approving the Interim Distribution (as defined below);

- (iv) approving the Third Report of the Receiver dated November 25, 2024, (the “**Third Report**”) and the Supplement to the Third Report of the Receiver dated November 28, 2024 (the “**Supplement to the Third Report**”) and the Receiver’s activities described therein;
- (v) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Third Report, the fee affidavit of Arif Dhanani sworn November 22, 2024, the fee affidavit of Avrom Brown sworn November 22, 2024, and the fee affidavit of Beatrice Loschiavo sworn November 22, 2024 (together, the “**Fee Affidavits**”);
- (vi) sealing Confidential Appendix 1 and Confidential Appendix 2 to the Third Report;
- (vii) approving the Receiver’s Statement of Receipts and Disbursements for both the Toronto Property and the Kingston Property contained in the Third Report (the “**Interim SRD**”); and,
- (viii) authorizing and directing Garfinkle Biderman LLP, the solicitors to the Receiver, to release the deposit held by it, in trust, which was paid to it by 2349891 Ontario Inc. (the “**Kingston Purchaser**”) pursuant to the asset purchase agreement between the Receiver and the Kingston Purchaser (the “**Kingston APS**”) on the basis that the Kingston Purchaser defaulted on the Kingston APS and forfeited the deposit.

3. The Receiver is of the view that the relief sought in this motion, including the approval of the Transaction, is in the best interest of the Debtor's stakeholders.

PART II. FACTS

A. Background

4. On December 6, 2023, the Receiver was appointed as receiver, without security, of the Properties pursuant to an Order of this Court (the "**Appointment Order**"). The Receiver's appointment became effective on December 22, 2023.¹

5. On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM Canada Limited.²

6. The Debtors' primary asset is the Toronto Property, which is the site of a residential property development.

B. Secured Creditor

7. On December 18, 2019, pursuant to a loan agreement (the "**Loan**") between Cameron Stephens Mortgage Capital Ltd. (the "**Lender**") and Conacher, 500 granted the Lender a collateral mortgage in the amount of \$15,600,000 on the Toronto Property to secure the Loan.³

8. The Lender is the only creditor with a registered charge on title to the Toronto Property.

¹ Appointment Order, Appendix A to the Third Report, Receiver's Motion Record ("**RMR**"), Tab 2A, p. 38.

² Omnibus Order, Appendix B to the Third Report, RMR, Tab 2B, p. 56.

³ Third Report, paras.33-35, RMR, Tab 2, p. 32.

9. As at November 22 2024, the amount outstanding under the Loan (and secured by the Toronto Property) is estimated to be approximately \$16 million.⁴

C. The Terminated Sale of the Toronto Property

10. On June 12, 2024, the Receiver entered into an agreement of purchase and sale for the Toronto Property (the “**Terminated APS**”) with Lakeshore Lux and Design Build Group Inc (“**Lakeshore**”).⁵

11. The Receiver sought, and obtained, an order from the Court approving the transaction on July 24, 2024.⁶

12. Lakeshore Lux then sought multiple extensions to the scheduled closing of the transaction, which closing was supposed to occur on July 30, 2024. After multiple attempts to secure a commitment from Lakeshore about the closing of the transaction, the Receiver ultimately notified Lakeshore on August 27, 2024 that it was terminating the APS due to its failure to close the transaction.⁷

D. The Re-Marketing and Sales Process

13. The Receiver immediately re-marketed the Toronto Property, and engaged in a sales process for the Toronto Property as follows.

⁴ Final Discharge Statement, Appendix H to the Third Report, RMR, Tab 2H, p. 186.

⁵ Third Report, para. 3, RMR, Tab 2, p. 24.

⁶ Third Report, para. 3, RMR, Tab 2, p. 24.

⁷ Second Report, paras. 9-15, Appendix D to the Third Report, RMR, Tab 2D, p. 95.

1. Marketing Efforts

14. The Receiver and Colliers, which had been retained for the original sale of the Toronto Property, set a bid deadline date of September 26, 2024 at 3:00 pm.⁸

15. Colliers listed the Toronto Property on MLS, and sent out an e-mail blast to its data of approximately 3,000 prospective purchasers.⁹

16. Colliers also contacted all previous bidders, and those who had signed a confidentiality agreement, to advise them that the Toronto Property was being re-marketed.¹⁰ Colliers maintained its electronic data room to provide access to confidential information pertaining to the Toronto Property to parties which had executed the Confidentiality Agreement.

2. Offers Received

17. On September 26, 2024, Colliers received two offers and one letter of intent for the Toronto Property. A subsequent offer was received on September 28, 2024. The Receiver reviewed the offers (including the late offer) with Colliers and the Lender. The Receiver determined that the offer from Toronto Purchaser was the highest and best offer, and should be accepted.¹¹

⁸ Third Report, para. 20, RMR, Tab 2, p. 29.

⁹ Third Report, para. 18, RMR, Tab 2, p. 28.

¹⁰ Third Report, para. 19, RMR, Tab 2, p. 29.

¹¹ Third Report, para. 22, RMR, Tab 2, p. 29. See also Confidential Appendix 1, submitted under seal, for a summary of the offers.

E. The APS

18. On October 7, 2024, the Receiver executed the APS with the Toronto Purchaser, subject to the approval of this Court. The salient terms of the APS include:

- (a) the APS is firm as the Toronto Purchaser has waived all conditions¹² except for the issuance of the AVO;
- (b) the Toronto Purchaser has paid the deposit required under the APS to the Receiver; and
- (c) closing of the sale contemplated in the APS is scheduled to occur within 10 business days following the date on which the AVO is granted, or such other date as agreed between the Toronto Purchaser and the Receiver.¹³

19. The Receiver is of the view that sufficient efforts were made to obtain the best price for the Toronto Property and that the marketing process was conducted fairly. The Receiver regards the APS as the most advantageous offer for the Toronto Property.¹⁴

20. The Receiver therefore recommends that this Court approve the APS and grant an Order vesting title in the purchased assets in the Toronto Purchaser or its assignee upon the closing of the Transaction.¹⁵

¹² The Toronto APS was conditional on the Toronto Purchaser's due diligence. The Toronto Purchaser subsequently indicated it was waiving its due diligence: Third Report, paras. 23-24, RMR, Tab 2, p. 29.

¹³ Third Report, para. 25, RMR, Tab 2, pp. 29-30.

¹⁴ Third Report, paras. 27-28, RMR, Tab 2, pp. 31-32.

¹⁵ Third Report, para. 29, RMR, Tab 2, p. 31.

F. Proposed Interim Distribution

21. The Receiver seeks an order authorizing it to distribute the proceeds of the sale of the Toronto Property as follows:

- (a) payment to the City of Toronto for the property taxes owing on the Toronto Property;
- (b) payment of the unpaid fees and disbursements of the Receiver and its counsel relating to the Toronto Property;
- (c) retention of \$100,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the Toronto Property and do all things necessary to wind up the Receivership administration in respect of the Toronto Property; and
- (d) payment to the Lender of the balance of the funds remaining from the proceeds of sale of the Toronto Property,

(collectively, the “**Interim Distribution**”).¹⁶

G. The Confidential Appendix

22. On this motion, the Receiver also seeks an order sealing Confidential Appendix 1 and Confidential Appendix 2 to the Third Report (together, the “**Confidential Appendices**”).

¹⁶ Third Report, para. 36, RMR, Tab 2, pp. 32-33.

23. The Confidential Appendices contains a summary of offers received for the Toronto Property as well as the purchase price under the APS. If the Transaction does not close, the release of this information could potentially have an adverse influence on any subsequent sales process that the Receiver would carry out in connection with the Property.

H. Sale of the Kingston Property and Subsequent Termination

24. The Receiver also seeks relief related to the sale of the Kingston Property.

25. The Receiver entered into a purchase and sale agreement (the “**Kingston APS**”) with 2349891 Ontario Inc. (the “**Kingston Purchaser**”) on August 13, 2024.¹⁷ Pursuant to the terms of the Kingston APS, the closing of the transaction was to occur on the later of: (i) three days following the issuance of the Kingston AVO, or the next business day; or (ii) October 2, 2024, or such other date as the parties may mutually agree upon.¹⁸

26. The Receiver attended before Justice Black on October 9, 2024, in order to seek the approval of the Kingston APS. Although the putative third mortgagee on the Kingston Property raised a number of concerns at the hearing, the Court ultimately determined were “insubstantial and bordering on inappropriate”¹⁹ and approved the sale of the Kingston Property.²⁰

¹⁷ Appendix F to the Supplement to the Third Report, dated November 28, 2024 (“Supplement to the Third Report”), Supplementary Receiver’s Motion Record (“Supplementary RMR”), Tab 1F, p. 46.

¹⁸ Third Report, para. 13, RMR, Tab 2, p. 28.

¹⁹ Endorsement Approving Sale of Kingston Property, para. 11, Supplementary RMR, Tab 1A, p. 14.

²⁰ Approval and Vesting Order, Appendix B to the Supplement to the Third Report, Supplementary RMR, Tab 1B, pp. 19-24.

27. Justice Black signed the Kingston AVO on November 18, 2024, and the closing of the sale of the Kingston Property, at that point, was scheduled for November 20, 2024.

28. On November 19, 2024 the Kingston Purchaser requested a 45-day extension.²¹

On November 20, the parties agreed that:

- (a) the Kingston Purchaser would provide an additional \$500,000 non-refundable deposit by noon on November 27, 2024;
- (b) the original deposit in the amount of \$250,000 shall be non-refundable;
- (c) time continued to be of the essence; and,
- (d) the Receiver would not grant any further extensions beyond January 6, 2025.²²

29. On November 27, 2024, counsel to the Kingston Purchaser wrote to “confirm that the Purchaser is no longer in a position to provide the additional \$500,000 deposit requested by the Receiver in order to secure an extension”. The letter went on to specify that the Kingston Purchaser was providing “formal notice of the Purchaser’s inability to complete the transactions as scheduled today...”²³

²¹ E-mails between Loopstra Nixon and Garfinkle Biderman, Supplementary RMR, Tab 1C, p. 38.

²² E-mails between Loopstra Nixon and Garfinkle Biderman, Supplementary RMR, Tab 1C, p. 33.

²³ Letter from Loopstra Nixon, Supplementary RMR, Tab 1D, p. 40.

30. Despite this, the Kingston Purchaser took the position that it does not consent to the release of the existing deposit of \$250,000, and that the deposit should be returned to the Kingston Purchaser.²⁴

31. On the same day (November 27, 2024), the Receiver confirmed the termination of the Kingston APS on the basis of the Kingston Purchaser neither closing the transaction, nor fulfilling the conditions necessary for an extension (despite the Kingston Purchaser already having agreed to those conditions). The solicitors to the Receiver confirmed the Receiver's position that the deposit had been forfeited, but would not release it pending further order from the Court.²⁵

32. The Receiver thus requests that the Court authorize and direct the solicitors to the Receiver to release the deposit held by it, in trust, which was paid by the Kingston Purchaser.

PART III. ISSUES

33. The Receiver's motion raises the following three legal issues, all of which should be answered in the affirmative:

- (a) should the Court approve the APS and the Transaction contemplated therein?
- (b) should the Court approve the contemplated Interim Distribution?;

²⁴ Letter from Loopstra Nixon, Supplementary RMR, Tab 1D, p. 40.

²⁵ Termination Letter, dated November 27, 2024, Supplementary RMR, Tab 1E, p. 43.

- (c) is it appropriate for the Court to seal the Confidential Appendices to the Third Report pending the closing of the Transaction?;
- (d) should the activities, fees and interim SRD of the Receiver, and the fees of its legal counsel be approved?; and,
- (e) should the deposit provided pursuant to the Kingston APS, which is being held in trust, be released to the Receiver?

PART IV. LAW

A. *The Court Should Approve the APS*

34. The factors to be considered by this Court in its assessment of the approval of a sale by a receiver are well established. A court should consider:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.²⁶

35. Having regard to the foregoing, the Receiver submits and recommends that this Court should approve the APS in order to give effect to the Transaction contemplated by the APS. In particular, the Receiver notes the following:

²⁶ *Royal Bank v. Soundair Corp.*, [1991 CanLII 2727 \(ONCA\)](#) at [para 16](#) [*Soundair*].

- (a) the Toronto Property was sufficiently exposed to the market through, among other things, distribution of promotional brochures to over 3,000 potential purchasers and a public MLS listing for approximately 4 weeks (which followed an initial 10-week listing period during the first sale that was ultimately terminated);²⁷
- (b) the Receiver considered three offers and one letter of intent for the Toronto Property;²⁸
- (c) the Receiver has concluded that the offer from the Toronto Purchaser highest and best offer received;²⁹ and
- (d) the APS contains no conditions which would delay any closing.³⁰

36. As the Ontario Court of Appeal agreed with and adopted in *Soundair*:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.³¹

37. In the present case, there are no exceptional circumstances which would warrant a rejection of the Receiver's recommendation.

²⁷ Third Report, para. 27, RMR, Tab 2, pp. 30-31.

²⁸ Third Report, para. 22, RMR, Tab 2, p. 29.

²⁹ Third Report, para. 22, RMR, Tab 2, p. 29.

³⁰ Third Report, para. 25(c), RMR, Tab 2, p. 30.

³¹ *Soundair* at [para 21](#).

38. In all, the marketing process was fair and transparent and yielded the most advantageous offer for the Toronto Property. There is no basis to interfere with the Receiver's recommendation to approve the APS.³²

39. This Court should also approve the Interim Distribution. The Lender has a valid and enforceable charge on the Toronto Property in first priority and is therefore entitled to the net proceeds of the Transaction.³³ The approval of this distribution will permit the Receiver to proceed towards the conclusion of its mandate in an efficient manner, minimizing the need for the added expense of further court attendances.

B. The Court Should Seal the Confidential Appendix

40. As noted above, the Receiver seeks an Order sealing the Confidential Appendices pending the closing of the Transaction contemplated by the APS.

41. The circumstances in which this Court should seal part of a record before it were described by the Supreme Court of Canada in the case of *Sierra Club of Canada v. Canada (Minister of Finance)*.³⁴

42. In that case, the Supreme Court observed that a confidentiality order should be granted in two circumstances:

³² *1180554 Ontario Ltd. v. CBJ Developments Inc. et al.* - CV-23-00707989-00CL - Ont. S.C.J. at paras. 6-7 ([Endorsement](#) of Justice Kimmel, May 29, 2024) [*"CBJ"*].

³³ Third Report, paras. 33-35, RMR, Tab 2, p. 32.

³⁴ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#) at [para. 45](#).

- (a) when an order is needed to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) when the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

43. In the context of court-supervised sale proceedings, this Court has routinely applied *SierraClub* and held that it is appropriate to seal information and documentation filed in support of a motion to approve a sale where the materials “disclose the valuations of the assets under sale, the details of the bids received by the court-appointed officer and the purchase price contained in the offer for which court approval is sought”.³⁵

44. Sealing these materials is necessary to ensure that the Receiver can maximize value for the Property if the contemplated Transaction does not close and the Receiver (or someone else) markets the Toronto Property for sale again.³⁶

C. *The Kingston Deposit has been Forfeited*

45. The Kingston APS was an unconditional offer from the Kingston Purchaser. The Kingston Purchaser paid a \$250,000 deposit to the solicitors for the Receiver as a non-refundable deposit.³⁷

³⁵ *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, [2014 ONSC 1173 \(CanLII\)](#) at [para. 32](#) [“*GE Canada*”]. For a similar example, see *CBJ* at [paras. 13-14](#).

³⁶ *GE Canada* at [paras. 32-34](#).

³⁷ Supplement to the Third Report, para. 5, Supplementary RMR, p. 7.

46. Despite multiple extensions, the Kingston Purchaser has now indicated that it is “no longer interested in pursuing financing”, but has taken the position that its deposit should be returned to it “in full”.³⁸

47. The Kingston APS clarifies what if the sale was not completed on the Closing Date as a result of the Kingston Purchaser’s default, “the Deposit shall be forfeited to the Vendor.”³⁹

48. The Receiver has acted in good faith in the sale of the Kingston Property, and was ready, willing and able to close the transaction:

- (a) the Receiver agreed to an initial extension to November 20, 2024, at no additional cost to the Kingston Purchaser.⁴⁰
- (b) on November 20, 2024, at the request of the Kingston Purchaser the Receiver agreed to a further extension of the closing date to January 6, 2025 on terms including the payment of a further deposit by November 27, 2025. The Kingston Purchaser agreed unconditionally to the terms of the extension, including that the original deposit in the amount of \$250,000 is non-refundable.⁴¹

³⁸ Letter from Loopstra Nixon, Appendix D to the Supplement to the Third Report, Supplementary RMR, Tab 1(D), p. 40.

³⁹ Redacted Kingston APS, art. 2.5(c), Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 55.

⁴⁰ Supplement to the Third Report, para. 13(c), Supplementary RMR, p. 9.

⁴¹ E-mails between Loopstra Nixon and Garfinkle Biderman, Appendix C to the Supplement to the Third Report, Supplementary RMR, Tab 1(C), p. 33.

49. The Kingston Purchaser breached the APS by (1) failing to satisfy the conditions of the further extensions by failing to provide the additional \$500,000 deposit⁴² and (2) failing to close the transaction on November 20, 2024.

50. The Kingston Purchaser asserts that it is entitled to the deposit due to the delay in the issuance of the Kingston AVO. In its view, because issuance of the Order was delayed by three weeks, the Kingston Purchaser lost the remainder of the 2024 construction season.⁴³

51. This argument fails for several reasons:

- (a) first, this is not a valid basis for breaching the Kingston APS. The parties agreed that the Kingston APS was subject to Court approval,⁴⁴ and that this condition was incapable of waiver.⁴⁵ The Kingston Purchaser further agreed that the Closing Date would be contingent on the issuance of the court order approving the sale.⁴⁶ At no point did the Kingston Purchaser make it a condition of the purchase that the transaction had to be completed in order to permit construction in the 2024 season;
- (b) second, there is no basis for the Kingston Purchase to request and agree to the terms of the extension if it was no longer interested in the Kingston

⁴² Letter from Loopstra Nixon, Appendix D to the Supplement to the Third Report, Supplementary RMR, Tab 1(D), p. 40.

⁴³ Letter from Loopstra Nixon, Appendix D to the Supplement to the Third Report, Supplementary RMR, Tab 1(D), p. 40.

⁴⁴ Redacted Kingston APS, art. 2.15(a)(i), Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 59.

⁴⁵ Redacted Kingston APS, art. 4.5, Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 64.

⁴⁶ Redacted Kingston APS, art. 1.1(j), Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 46.

Property due to the loss of the 2024 construction season. In fact, it was the Kingston Purchaser which requested on November 20 that the closing date be extended to January 6, 2025, and then explicitly agreed to the conditions for this extension as proposed by the Receiver. Simply put, the issue of the 2024 construction season is a red herring for the Kingston Purchaser's inability to close; and

- (c) finally, the Kingston Purchaser's extension requests came *after* the Kingston AVO was issued. Therefore, the Kingston Purchaser clearly waived any delay as a result of the late issuance of the Kingston AVO.

52. It is well-established that when a purchaser repudiates an APS and fails to close the transaction, the deposit is forfeited, without proof of any damage suffered by the vendor.⁴⁷ The deposit paid by the Kingston Purchaser stood as security for the performance of the contract, and by its failure to perform, has forfeited the deposit.⁴⁸

53. Moreover, both the Kingston APS⁴⁹ as well as the parties subsequent correspondence⁵⁰ confirm that time remained of the essence. The Court of Appeal has been clear that where time is of the essence, "a time limit in an agreement is essential such that breach of the time limit will permit the innocent party to terminate the contract."⁵¹

⁴⁷ *Azzarello v. Shawqi*, [2019 ONCA 820](#) at [para. 45](#), citing *Tang v. Zhang*, [2013 BCCA 52](#) and *Redstone Enterprises Ltd. v. Simple Technology Inc.*, [2017 ONCA 282](#).

⁴⁸ *Azzarello v. Shawqi*, [2019 ONCA 820](#) at [para. 54](#), citing *Benedetto v. 2453912 Ontario Inc.*, [2019 ONCA 149](#).

⁴⁹ Redacted Kingston APS, art. 6.3, Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 69.

⁵⁰ E-mails between Loopstra Nixon and Garfinkle Biderman, Appendix C to the Supplement to the Third Report, Supplementary RMR, Tab 1(C), p. 33.

⁵¹ *3 Gill Homes Inc. v. 5009796 Ontario Inc. (Kassar Homes)*, [2024 ONCA 6](#) at [para. 24](#), citing *Di Millo v. 2099232 Ontario Inc.*, [2018 ONCA 1051](#).

The Receiver was entitled to terminate the Kingston APS due to the Kingston Purchaser's default as a result of missing deadlines.

54. There is also no concern with unfairness to the Kingston Purchaser. The Receiver agreed to multiple extension requests and was fully co-operative in facilitating the closing of the transaction. The Receiver itself was able to close. Meanwhile, creditors to the Debtor will be prejudiced due to the Kingston Purchaser's default since interest on the secured charges will continue accrue while the Receiver re-markets the Kingston Property for sale. Even though damages are not necessary for the deposit to be forfeited,⁵² the forfeited deposit will address this prejudice in part.

55. The Receiver respectfully requests that the Receiver's solicitors be authorized and directed to release the deposit held by it, in trust, for the benefit of the Debtor's creditors.

D. The Activities, Fees and Interim SRD of the Receiver, and the Fees of its Legal Counsel, Should be Approved

56. The fees and disbursements incurred by the Receiver and its counsel for the period from January 1, 2024 to June 30, 2024, were previously approved by the Court pursuant to an order of the Court dated July 24, 2024.

57. The Receiver submits that the fees, activities and disbursements of the Receiver and those of its legal counsel should be approved because the Receiver and its counsel engaged diligently since July 1, 2024, among other things:

- (a) obtain the approval and sale order of the first Terminated APS;

⁵² *Azzarello v. Shawqi*, [2019 ONCA 820](#) at [para. 45](#).

- (b) negotiate further extensions with Lakeshore;
- (c) oversee the re-marketing and sale of the Toronto Property;
- (d) negotiate the APS with the Toronto Purchaser; and
- (e) prepare the Third Report and the Supplement to the Third Report.

58. The fees and disbursements of the Receiver and its counsel were incurred at each party's standard rates and charges as set out in their respective fee affidavits. The Receiver submits that these fees and disbursements are fair, reasonable and justified in the circumstances.⁵³

59. The Receiver seeks approval of the interim receipts and disbursements for both the Toronto Property and the Kingston Property. The Receiver has received and paid monies on behalf of the Debtors for the benefit of all stakeholders, as set out in the Toronto Property Interim R&D, the Kingston Property Interim R&D, and Third Report.⁵⁴ Accordingly, this Court should approve the Toronto Property Interim R&D and the Kingston Property Interim R&D.

PART V. ORDER REQUESTED

60. The Receiver respectfully requests that this Court make an order in the form of the draft AVO and ancillary relief order as uploaded on Case Centre.

⁵³ See Fee Affidavit of Arif Dhanani, sworn November 22, 2024, Appendix K to the Third Report, RMR, Tab 2K, p. 192; Fee Affidavit of Beatrice Loschiavo, sworn November 22, 2024, Appendix L to the Third Report, RMR, Tab 2L, p. 210; Fee Affidavit of Avrom Brown, sworn November 22, 2024, Appendix M to the Third Report, RMR, Tab 2M, p. 232.

⁵⁴ Toronto Property Interim R&D, Appendix I to the Third Report, RMR, Tab 2I, p. 188; Kingston Property Interim R&D, Appendix J to the Third Report, RMR, Tab 2J, p. 190.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of December, 2024.

A handwritten signature in blue ink, appearing to be 'JL' or 'RS', written in a cursive style.

Jeffrey Larry / Ryan Shah

SCHEDULE “A” – AUTHORITIES CITED

1. *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, [2014 ONSC 1173 \(CanLII\)](#).
2. *Royal Bank v. Soundair Corp.*, [1991 CanLII 2727 \(ONCA\)](#).
3. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#).
4. *1180554 Ontario Ltd. v. CBJ Developments Inc. et al.* - CV-23-00707989-00CL – Ont. S.C.J. (Commercial List) ([Endorsement](#) of Justice Kimmel, May 29, 2024).
5. *3 Gill Homes Inc. v. 5009796 Ontario Inc. (Kassar Homes)*, [2024 ONCA 6](#), citing *Di Millo v. 2099232 Ontario Inc.*, [2018 ONCA 1051](#).
6. *Azzarello v. Shawqi*, [2019 ONCA 820](#)

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PROCEEDING COMMENCED AT
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**FACTUM OF THE RECEIVER FOR APPROVAL AND
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(RETURNABLE DECEMBER 4, 2024)**

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