

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 October 17, 2025)

October 14, 2025

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**Lawyers for the Receiver, TDB Restructuring
Limited**

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 Kingston Property.

2. In particular, the Receiver seeks Orders:

- (i) approving the sale transaction (the “**Transaction**”) in respect of the Kingston Property, as contemplated by an agreement of purchase and sale (the “**2025 APS**”) between the Receiver and 1000321689 Ontario Ltd. (“**100**”) dated June 24, 2025; and
- (ii) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed AVO, transferring and vesting all of Conacher’s (as defined below) right, title and interest in and to the Purchased Assets (as defined in the 2025 APS) in 100 or its nominee, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
- (iii) approving the Fourth Report of the Receiver dated October 6, 2025 (the “**Fourth Report**”) and the Receiver’s activities described therein;

- (iv) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Fourth Report and the fee affidavits appended thereto;
 - (v) approving the Receiver's interim statement of Receipts and disbursements, for the period from December 22, 2023 to September 30, 2025 (the "**Interim SRD**");
 - (vi) approving the Proposed Distribution of Proceeds (as defined in the Fourth Report); and
 - (vii) sealing Confidential Appendix 1 to the Fourth Report until the closing of the sale of the Purchased Assets or further Order of the Court.
3. The Receiver is of the view that the relief sought in this motion, including the approval of the Transaction, is in the best interests of the stakeholders of the Kingston Property.

PART II. FACTS

A. *The Receivership*

4. On December 6, 2023, RSM Canada Limited was appointed Receiver of the Properties and of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Properties, including all proceeds thereof by order of Justice Conway ("**Receivership Order**").¹ On March 1, 2024, the Court

¹ Receivership order, Appendix A to the Fourth Report of the Receiver, Receiver's Motion Record ("**RMR**"), Tab 2A, pp. 39-40, [E984-E985](#).

granted an order substituting TDB Restructuring Limited in place of RSM Canada Limited as the Receiver (“**Omnibus Order**”).²

5. The Properties are located in Kingston and Toronto, Ontario.³

B. Secured Creditors

6. Pursuant to a commitment letter dated November 22, 2019 (the “**Loan Commitment**”), Cameron Stephens Mortgage Capital Ltd. (the “**Lender**”) agreed to loan the sum of \$13 million to the Debtor (the “**CS Loan**”).⁴

7. As security for the CS Loan, the debtor granted the Lender a mortgage on the Kingston Property (the “**CS Mortgage**”).⁵

8. Following the registration of the CS Mortgage on title to the Kingston Property, 2462686 Ontario Inc. and 2478659 Ontario Inc. registered subsequent mortgages on title to the Kingston Property.⁶

C. Sales Process

9. Following its appointment, the Receiver took steps to market the Kingston Property for sale. The Receiver’s sales process for the Kingston Property (the “**Sales Process**”) is described below.

² Omnibus Order, Appendix B to the Fourth Report of the Receiver, RMR, Tab 2B, p. 57 at para 2, [E1002](#).

³ Receiver’s Fourth Report, RMR, Tab 2, p. 22 at para 1, [E967](#).

⁴ Legal Opinion, Appendix J to the Fourth Report of the Receiver, RMR, Tab 2J, p. 192, [E1137](#).

⁵ Legal Opinion, Appendix J to the Fourth Report of the Receiver, RMR, Tab 2J, p. 192, [E1137](#).

⁶ Fourth Report of the Receiver, RMR, Tab 2, p. 33 at para 41, [E978](#).

10. The Receiver invited eight commercial real estate brokers to submit proposals for the marketing and sale of the Kingston Property.⁷
11. Five of the brokers submitted proposals. With the concurrence of the Lender, the Receiver selected Rogers & Trainor Commercial Reality Inc. (“**RTCR**”) as the listing agent for the Kingston Property.⁸
12. RTCR launched its marketing campaign on April 10, 2024⁹ which resulted in an agreement of purchase and sale (the “**2024 APS**”) in respect of the Kingston Property between the Receiver and 2349891 Ontario Inc. (“**234**”).¹⁰
13. On October 9, 2024, the Court granted an approval and vesting order in respect of the 2024 APS.¹¹
14. The 2024 APS failed to close due to the default of 234 in November 2024 and the Receiver thereafter terminated the 2024 APS.¹²
15. On January 9, 2025, RTCR re-listed the Kingston Property on an unpriced basis and engaged in the following marketing efforts from January 9 to May 8, 2025 (the “**2025 Sales Process**”):

⁷ Second Report of the Receiver, Appendix D to the Fourth Report of the Receiver, RMR, Tab 2D, p. 89 at para 32, [E1034](#).

⁸ Second Report of the Receiver, Appendix D to the Fourth Report of the Receiver, RMR, Tab 2D, p. 89 at para 33, [E1034](#).

⁹ Second Report of the Receiver, Appendix D to the Fourth Report of the Receiver, RMR, Tab 2D, p. 90 at para 36, [E1035](#).

¹⁰ Fourth Report of the Receiver, RMR, Tab 2, p. 22 at para 3, [E967](#).

¹¹ Fourth Report of the Receiver, RMR, Tab 2, p. 22 at para 3, [E967](#).

¹² Supplement to the Third Report, Appendix C to the Fourth Report of the Receiver, RMR, Tab 2C, p. 73 at paras 9-12, [E1018](#).

- (a) the Kingston Property was re-listed on MLS and RTCR's website;
 - (b) advertisements were placed in the Globe and Mail on January 16 and 21, 2025;
 - (c) e-mails were sent to RTCR's database of developers;
 - (d) the Kingston Property was also listed on Loopnet, CCIM Deal Share, Crexi, Brevitas, Realty Zapp, Commercial Edge and various social media platforms, including Facebook, LinkedIn and Instagram; and
 - (e) RTCR's electronic data room was also made available to provide access to confidential information pertaining to the Kingston Property to parties which had executed a confidentiality agreement.¹³
16. During this period between January 9 and May 8, 2025, the Receiver received 26 new inquiries and 16 non-disclosure agreements were signed, however no offers were made.¹⁴
17. As a result, the Receiver then instructed RTCR to change the marketing strategy and list the Kingston Property at a price of \$18 million.¹⁵
18. After changing the listing price, the Receiver received a further 7 inquiries, 4 signed non-disclosure agreements, and one offer from 100.¹⁶

¹³ Fourth Report of the Receiver, RMR, Tab 2, p. 28 at paras 18-19, [E973](#).

¹⁴ Fourth Report of the Receiver, RMR, Tab 2, p. 28 at para 20, [E973](#).

¹⁵ Fourth Report of the Receiver, RMR, Tab 2, p. 28 at para 21, [E973](#).

¹⁶ Fourth Report of the Receiver, RMR, Tab 2, p. 28-29 at paras 22-23, [E973-E974](#).

19. The Receiver determined that the offer from 100 was the best offer in the circumstances and on July 7, 2025, the Receiver and the Purchaser entered into the 2025 APS.¹⁷ The salient terms of the 2025 APS and matters relating thereto include:
- (a) the purchased assets include the Kingston Property;
 - (b) the subdivision agreement between Conacher Kingston Holdings Inc. and the City of Kingston is being assigned to 100. The securities held in connection with the subdivision agreement by the City of Kingston are also being assigned to 100, who has agreed to provide the Receiver with a credit for same on the closing statement of adjustments;
 - (c) the deposit to be provided under the 2025 APS has been received by Garfinkle Biderman from the Kingston Purchaser;
 - (d) the offer is firm as 100 has waived all conditions to closing except the issuance of the AVO (as defined below);
 - (e) the 2025 APS is conditional on Court approval and the issuance of an order vesting the Purchased Assets in 100 free and clear of claims and encumbrances, other than those specifically itemized in the 2025 APS (the “**AVO**”);
 - (f) 100 is buying the Kingston Property on an “as is, where is” basis; and

¹⁷ Fourth Report of the Receiver, RMR, Tab 2, p. 29 at paras 23-24, [E974](#).

- (g) closing of the sale provided for in the 2025 APS is scheduled to occur 30 calendar days immediately following the date upon which the AVO is granted, or such other date as the Receiver and 100 may mutually agree upon.¹⁸

D. The Transaction Should be Approved

20. The Receiver is of the view that the Sales Process, as described above, was appropriate and allowed for sufficient exposure to obtain the best transaction available in the circumstances. In particular:

- (a) notice of the sale was sent to more than 7,000 parties;
- (b) the Kingston Property was listed for sale on MLS;
- (c) the Kingston Property was listed on RTCR's website;
- (d) the property was listed exclusively for a period of 3 weeks and then exposed to the market on MLS thereafter for over a year; and
- (e) the offer from 100 is the only offer that has been received by the Receiver since the termination of the 2024 APS and the re-marketing of the Kingston Property in January 2025.¹⁹

21. The Receiver is of the view that:

¹⁸ Fourth Report of the Receiver, RMR, Tab 2, p. 29-30 at paras 28, [E974-E975](#).

¹⁹ Fourth Report of the Receiver, RMR, Tab 2, pp. 30-31 at para 30, [E975-E976](#).

- (a) the 2025 APS represents the highest and best offer for the Kingston Property in the circumstances;
- (b) the market for the Kingston Property was widely canvassed; and
- (c) it is unlikely that additional time on the market will result in a better transaction.²⁰

22. Accordingly, in the Receiver's view, the Transaction provides the greatest recovery available for the Debtor's stakeholders in the circumstances.

E. Distribution of Net Sales Proceeds

23. The Receiver proposes to distribute the net proceeds of the Transaction as follows (the "**Proposed Distribution**"):

- (a) payment to the City of Kingston for the property taxes owing on the Kingston Property at the time of closing;
- (b) payment of any remaining unpaid fees and disbursements of the Receiver and its counsel relating to the Kingston Property;
- (c) repayment to the Lender of the Receiver's borrowings of in respect of the Receiver's Borrowing Charge secured by the Kingston Property;
- (d) payment to RTCR of the commissions owed to it upon the successful sale and closing of the Kingston Property;
- (e) retention of \$75,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the

²⁰ Fourth Report of the Receiver, RMR, Tab 2, p. 31 at paras 31-32, [E976](#).

Kingston Property and do all things necessary to wind up the receivership administration in respect of the Kingston Property; and

- (f) distribute to the Lender any remaining funds in the Receiver's trust account for the Kingston Property, up to the amount of Conacher's Indebtedness to the Lender.²¹

F. Confidential Appendix

24. The Confidential Appendix is an unredacted copy of the 2025 APS, which contains the purchase price of the Kingston Property under the 2025 APS. The publication of this information could adversely impact the future marketability of the Kingston Property should the Transaction not close.

PART III. ISSUES

25. 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 Proposed Distribution of Proceeds?;
- (c) should the Court seal the Confidential Appendix to the Fourth Report pending the closing of the Transaction?; and

²¹ Fourth Report of the Receiver, RMR, Tab 2, pp. 33-34 at para 44, [E978-E979](#).

- (d) should the activities, fees and interim SRD of the Receiver, and the fees of its legal counsel be approved?

PART IV. LAW

A. *The Court Should Approve the APS*

26. 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.²²

27. 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:

- (a) the Kingston Property was sufficiently exposed to the market through, among other things, distribution of promotional brochures to over 7,000 potential purchasers and a public listing on MLS for approximately one year in total;
- (b) the Receiver received only one offer, which gave rise to Transaction; and

²² *Royal Bank v. Soundair Corp.*, [1991 CanLII 2727 \(ONCA\)](#) at [para. 16](#) [*“Soundair”*].

- (c) the only condition to closing is the issuance of the AVO now sought on this motion.²³

28. The above factors strongly support the approval of the Transaction and are consistent with the factors present in past cases where the Court approved a sale of real property by a receiver.²⁴

29. Additionally, a Court ought only interfere with a receiver's recommendation concerning the sale of a debtor's assets in exceptional circumstances. 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.²⁵

30. In the present case, there are no exceptional circumstances which would warrant a rejection of the Receiver's recommendation. The Receiver extensively marketed the Kingston Property and accepted the highest, best and only offer available to it.

31. In all, the marketing process was fair and transparent and there is no reason to believe that any further marketing efforts would produce a superior sale price. There is,

²³ Fourth Report of the Receiver, RMR, Tab 2, pp. 30-31 at paras 30-32, [E975-E976](#).

²⁴ See *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#) [“*Chacon*”]; *First Source Financial Management Inc. v. 2807823 Ontario Inc.*, CV-24-00718243-00CL ([Endorsement of Justice Conway, October 22, 2024](#)); *1180554 Ontario Limited Vs CBJ Developments*, CV-23-00707989-00CL ([Endorsement of Justice Black, October 23, 2024](#)).

²⁵ *Soundair* at [para. 21](#).

accordingly, no basis to interfere with the Receiver's recommendation to approve the 2025 APS.

B. This Court Should Approve the Proposed Interim Distribution

32. If this Court approves the Transaction, it should also approve the Proposed Interim Distribution.

33. In determining whether it is appropriate to authorize an interim distribution, the court may consider: (a) whether the proposed recipient's security is valid and enforceable; (b) whether the amounts that are owed to the proposed recipient exceed the proposed interim distribution amount; and (c) whether the proposed interim distribution would result in interest savings.²⁶

34. In this case, the Lender's security is valid and enforceable and the Proposed Interim Distribution will facilitate the payment of priority payables, which will minimize interest accrual to the benefit of all parties with an interest in the Kingston Property.

35. 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 or further court attendances.

C. The Court Should Seal the Confidential Appendix

36. As noted above, the Receiver seeks an Order sealing the Confidential Appendix pending the closing of the Transaction contemplated by the 2025 APS.

²⁶ Chacon at [para. 45](#).

37. 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)*.²⁷

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

- (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.

39. In the context of court-supervised sale proceedings, this Court has routinely applied *Sierra Club* 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”.²⁸

²⁷ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para. 45](#).

²⁸ *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#) at [para. 32](#) [*“GE Canada”*]. For a similar example, see *CBJ* at [paras. 13-14](#).

40. The sealing order sought is narrowly tailored, as the only information that will be restricted from open court is the price of the 2025 APS and this sealing order will terminate following the successful sale of the Kingston Property.

41. Sealing these materials is necessary to ensure that the Receiver can maximize value for the Kingston Property if the contemplated Transaction does not close and the Receiver (or someone else) markets the Kingston Property for sale again.²⁹

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

42. The Court should approve:

- (a) The Fourth Report;
- (b) The activities of the Receiver set out in the Fifth Report; and
- (c) The fees and disbursements of Receiver and its counsel.³⁰

43. The Court has the jurisdiction to review and approve the activities of a court-appointed officer in an insolvency proceeding as set out in the officer's reports and will approve them where they are reasonable and appropriate in the circumstances.³¹

44. In this case, the Fourth Report details activities undertaken and fees incurred by the Receiver and its counsel. These include:

²⁹ *GE Canada* at [paras. 32-34](#).

³⁰ See *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [paras. 33-35](#) for a description of the factors that Courts will consider in determining whether a court-appointed officer's accounts are fair and reasonable.

³¹ *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.*, 2024 ONSC 3507 at paras. 48, 52, 57, Book of Authorities of the Proposal Trustee, Tab 1, pp. 9-10 citing *Target Canada Co. Re*, [2015 ONSC 7574](#) at [paras. 2, 12](#); *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) at [para. 66](#); *Ravelston Corp. (Re)*, [2005 CanLII 63802 \(ON CA\)](#) at [para. 40](#).

- (a) Marketing the Kingston Property for sale and negotiating the 2025 APS;
- (b) Managing stakeholder correspondence;
- (c) Addressing the termination of the 2024 APS;
- (d) Completing necessary filings with the Office of the Superintendent of Bankruptcy; and
- (e) Engaging trades to complete necessary protective works on the Kingston Property.³²

45. These activities were undertaken for the benefit of the stakeholders of the Kingston Property and, accordingly, this Court should approve them.

PART V. ORDER REQUESTED

46. The Receiver respectfully requests that this Court make orders in the form of the AVO and Ancillary Relief Order included in the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of October, 2025.



Jeffrey Larry / Ryan Shah

³² Fourth Report of the Receiver, RMR, Tab 2, pp. 26-27 at para 14, [E971-E972](#).

SCHEDULE “A” – AUTHORITIES CITED

1180554 Ontario Limited v. CBJ Developments, CV-23-00707989-00CL, [Endorsement of Justice Black, October 23, 2024](#), (ONSC)

Bank of Nova Scotia v. Diemer, [2014 ONCA 851](#)

Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al., 2024 ONSC 3507

First Source Financial Management Inc. v. 2807823 Ontario Inc., CV-24-00718243-00CL, [Endorsement of Justice Conway, October 22, 2024](#), (ONSC)

First Source Financial Management v. Chacon Strawberry Fields Inc., [2024 ONSC 7229](#)

GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc., [2014 ONSC 1173](#)

Ravelston Corp. (Re), [2005 CanLII 63802 \(ON CA\)](#)

Royal Bank v. Soundair Corp., [1991 CanLII 2727 \(ONCA\)](#)

Sierra Club of Canada v. Canada (Minister of Finance), [2002 SCC 41](#)

Target Canada Co. Re, [2015 ONSC 7574](#)

Triple-I Capital Partners Limited v. 12411300 Canada Inc., [2023 ONSC 3400](#)

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